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[Filed—November 3, 1947.]

Notice of Appeal

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 9690

BROADCASTING SERVICE ORGANIZATION, INC.,
Appellant,

vs.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee.

NOTICE OF APPEAL FROM DECISION OF FEDERAL COMMUNICATIONS COMMISSION AND STATEMENT OF REASONS THEREFOR

Comes now Broadcasting Service Organization, Inc., by its attorneys, this 3rd day of November, 1947, pursuant to Sections 402 (b)(1) and 402 (c) of the Communications Act of 1934, as amended (48 Stat. 1064), and Section 10 of the Administrative Procedure Act (60 Stat. 237), and files this Notice of Appeal from the Decision of the Federal Communications Commission adopted April 21, 1947, and released April 23, 1947, denying appellant's application for renewal of license of Radio Station WORL, Boston, Massachusetts (Docket No. 6626, File No. B1-R-205) and dismissing as moot the then pending application for transfer of control of appellant from its present stockholders to Bitner Broadcasting Company (File No. B1-TC-506).

On May 13, 1947, appellant filed with the Federal Communications Commission, pursuant to Section 405 of the Communications Act, a Petition for Rehearing of its April 21, 1947 Decision. On July 28, 1947, the Commission issued an order setting this Petition for Rehearing for oral argument and ordering that such argument be directed to the findings of fact and conclusions of law set out in its April 21, 1947 Decision. Oral argument, pursuant to this order, was held before the Commission *en banc* October 8, 1947. On October 15, 1947, the Commission adopted and released a Memorandum Opinion and Order reaffirming and adopting its April 21, 1947, Decision and Order as its Final Decision on the WORL renewal and transfer of control applications. E. K. Jett, Commissioner, issued written dissents from both the April 21, 1947, Decision and the October 15, 1947, Memorandum Opinion and Order reaffirming that Decision.

Appellant's Standing to Appeal

Appellant has standing under both Sections 402 (b)(1) of the Communications Act of 1934, as amended, and Section 10 of the Administrative Procedure Act, to take this appeal as an applicant for renewal of an existing radio station license and for consent to voluntary transfer of control of the licensee corporation, which renewal has been denied and which transfer of control has been summarily dismissed as moot by the Federal Communications Commission.

Summary of Proceedings From Which Appeal Is Taken

Appellant has been the licensee of Station WORL, Boston, Massachusetts, which operates on 950 kc, with 1 KW, unlimited time, since November 20, 1931. On May 27, 1944, appellant filed an application pursuant to Section 308 (a) of the Communications Act of 1934, as amended, for re-

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newal of its station license (main and auxiliary). On June 13, 1944, this application was designated for hearing on the following issues:

"To determine who are the present owners of the stock of the applicant corporation, and when and from whom said stock was acquired.

"2. To determine whether the license granted to the applicant corporation, or the rights or responsibilities incident thereto, have been in any manner, either directly or indirectly transferred, assigned, or disposed of without the consent of the Commission, as provided by the Communications Act of 1934, as amended, and particularly Section 310(b) thereof.

"3. To determine whether the statements and representations made in the various applications, documents, and reports filed with the Commission on behalf of the applicant, by its officers, directors, and/or agents, have fully and accurately reflected the facts concerning the ownership and distribution of the stock of the company.

"4. To determine whether the applicant's officers, directors, stockholders, and/or agents, or either of them, have made false statements and representations to the Commission as to the ownership, transfer, and/or control of the stock of the applicant.

"5. To determine whether all contracts and agreements which have been entered into by applicant's officers, directors, stockholders and/or agents, relative to the sale and transfer of the stock of the applicant corporation, have been reported to the Commission as required by Section 43.1 of the Rules and Regulations.

"6. To determine whether in view of the facts adduced under the foregoing issues, public interest,

convenience, or necessity would be served by granting the instant application."

Hearings were held on these issues on September 22 and 23, October 18, and December 5, 1944, in Washington, D. C., and on November 20, 1944, in New York, N. Y., before P. W. Seward, Esq., a presiding officer designated by the Commission.

On October 24, 1945, the Commission adopted a Proposed Decision denying the application for renewal of license of Station WORL. It found that a transfer of control of Broadcasting Service Organization, Inc. had occurred March 25, 1937, without the consent of the Commission as required by Section 310 (b) of the Communications Act, and the rules adopted pursuant thereto; and that the applicant had submitted false reports and testimony to the Commission concerning this transfer of control and other matters. The Proposed Decision concluded that "the applicant cannot be entrusted with the responsibilities of a licensee" and therefore "a grant of the application for renewal of license for the operation of Station WORL by the applicant corporation would not serve public interest, convenience, or necessity and should be denied."

On November 26, 1945, appellant filed Exceptions to the Proposed Decision, with a Memorandum Brief in support thereof, and requested oral argument thereon, pursuant to Section 1.231 (g) (now Section 1.854) of the Commission's Rules. The Exceptions contained detailed citations from the hearing record clearly establishing that the Commission had erred in finding that the applicant or any of its officers, directors or stockholders had knowingly or wilfully violated the requirements of Section 310 (b) of the Communications Act or intentionally submitted any false or deceptive reports to the Commission or concealed information form the Commission. The Exceptions also urged that the Commission erred in failing to make a

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finding in the Proposed Decision regarding the extent to which the present operation and program service of WORL is serving the public interest, convenience and necessity, substantial and uncontradicted evidence having been presented on the notable public service record and activities of the station.

The Memorandum Brief set forth that the evidence presented, especially when considered in the light of the Station's outstanding public service to the community and the numerous Commission precedents theretofore established, required that a grant of the WORL renewal application be made. The brief pointed out that the record shows no motive or reason for the appellant to not file application for transfer of control under Section 310 (b) of the Act or to knowingly misrepresent or conceal information from the Commission—and without evidence of a motive, a conclusion of fraud or wilful misrepresentation cannot properly be drawn.

On January 24, 1946, fifteen months after the issuance of its Proposed Decision, the Commission heard oral argument thereon.

On August 26, 1946, appellant's present stockholders and Bitner Broadcasting Company filed a joint application requesting Commission consent, under Section 310 (b) of the Act, for transfer of control of appellant from its present stockholders to Bitner Broadcasting Company (B1-TC-506). None of the Bitner stockholders had any prior connection with Station WORL.

On April 23, 1947, fifteen months after oral argument, the Commission released its Decision and Order denying the renewal application and dismissing the transfer of control application. The Decision was by a vote of three to one, with the remaining three of the seven members of the Commission not participating therein. The dissenting opinion of Commissioner E. K. Jett points out that on its

facts, the WORL case differs from that in *WOKO, Inc.* vs. *Federal Communications Commission,* Docket No. 6486, decided April 4, 1947, and affirmed by the Supreme Court of the United States on December 9, 1946 (329 U. S. 223). The dissent emphasizes that, unlike WOKO, the record on WORL shows no motive for any fraud or misrepresentation on the Commission; and unlike WOKO, the identity of all the stockholders in WORL has been disclosed to the Commission. Commissioner Jett's dissent states that "I am not convinced that any of the parties are guilty of having made false statements and concealments which were designed to mislead the Commission" and "accordingly, I do not concur in the Commission's drastic decision denying absolutely the application for renewal of WORL's license. . . ."

The Petition for Rehearing filed by appellant May 13, 1947, alleged that there is no substantial evidence in the record to support the findings and conclusions of the Decision that the applicant has knowingly or wilfully misrepresented facts to the Commission; nor is there any substantial evidence in the record of a motive or purpose on the part of appellant or it principals from which a conclusion can be reached of any fraud upon the Commission or intent to deceive the Commission either as to ownership or control of the licensee. The Petition for Rehearing also pointed out that the April 21, 1947, Decision is predicated upon wholly different grounds than the Proposed Decision of October 24, 1945. The Final Decision, unlike the Proposed Decision, does not conclude that there has been a wilful violation of Section 310 (b) of the Act, but only concludes that since "the applicant does not possess the necessary Character qualifications for the licensee of a radio station" it "cannot be entrusted with the responsibilities of a licensee." The Decision states that "we also conclude that this want of the requisite character qualifications is so serious that the rendition of a satisfactory broadcasting

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service by the applicant cannot serve to detract from this conclusion. The Petition for Rehearing alleged that:

> "Since, for the first time in the time proceeding, a question has been raised concerning the character and fitness of its principals, justice and equity require that the hearing record be reopened to afford opportunity for the applicant to submit evidence concerning the character of its principals and their moral fitness to be licensees of a radio station. To deny an application upon an issue without first affording the applicant notice and an opportunity to be heard on that issue is clearly arbitrary and capricious."

The Rehearing Petition also pointed out that under Section 4 (h) of the Communications Act, four members of the Commission constitute a quorum thereof; and while a bare quorum voted on the decision, only three out of seven, or less than one-half of the Commission, voted for the denial of license. Moreover, since one of the three Commissioners voting for the denial had not participated in the oral argument on the Proposed Decision, less than a quorum of the members of the Commission hearing the oral argument voted on the final decision. The Petition also alleged that the summary dismissal as moot, without a hearing, of the pending application B1-TC-506 for transfer of control of appellant to Bitner Broadcasting Company was arbitrary and capricious and in contravention of the hearing requirements of Section 309 (a) of the Communications Act of 1934, as amended.

The Commission Memorandum Opinion and Order adopted October 15, 1947, reaffirming its April 21, 1947 Decision, contains but two short paragraphs and does not make findings or decision on all of the points raised in the Petition for Rehearing. The Memorandum Opinion simply notes that oral argument on the Petition for Re-

hearing was ordered to "be directed to the findings of fact and conclusions of law set out in the Commission's Decision of April 21, 1947" and "after careful consideration of our Decision and Order of April 21, 1947, and the record on which they are based, we have concluded that no sufficient reason has been advanced for departure therefrom. . . ." The Opinion ignores appellant's request for an opportunity, at a further hearing, to present evidence on the character and integrity of its principals, and also ignores appellant's contention that the dismissal as moot, without hearing, of the application for transfer of control to Bitner Broadcasting Company contravenes Section 309 (a) of the Act.

Commissioner E. K. Jett issued a dissent to the Memorandum Opinion in substantially the same language as his dissent to the Decision. Commissioner Rosel Hyde did not participate in either the Decision or Memorandum Opinion.

Appellant has continued to operate Station WORL since the expiration of its last regular license August 1, 1944, by virtue of temporary extensions of license granted by the Commission from time to time. The April 21, 1947. Decision provided that "Broadcasting Service Organization, Inc. will be given a temporary license for Station WORL until August 31, 1947, to wind up its affairs." On August 21, 1947, on motion of appellant, the Commission extended its temporary license until November 30, 1947 because of the pendency of the Petition for Rehearing. The Memorandum Opinion and Order of October 15, 1947 on the Petition for Rehearing states that since the station is presently operating on a temporary extension of license until November 30, 1947 "action by the Commission with reference to the extension of the license is not necessary at this time." Co-incident with the filing of this Notice of Appeal, appellant is filing with the Commission a petition requesting that the temporary license for the operation of WORL be extended until after the conclusion of Appeal.

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Reasons for Appeal

The Commission Decision of April 21, 1947, and the Memorandum Opinion and Order of October 15, 1947, are in error and should be reversed because:

1. The Findings of Fact and Conclusions of the Decision are not supported by substantial evidence and are arbitrary and capricious in finding and concluding that appellant, or its principals, have knowingly and wilfully misrepresented facts, submitted false reports and testimony, and engaged in a planned program of deception and continued series of concealments, thus perpetrating fraud on the Commission.

2. The Findings of Fact and Conclusions of the Decision are not supported by substantial evidence and are arbitrary and capricious in finding and concluding that on March 25, 1937, the principals of appellant acted jointly in acquiring control of Station WORL and since that time have jointly been in full control of the station and its facilities.

3. The Findings of Fact and Conclusion of the Decision are not supported by substantial evidence and are arbitrary and capricious insofar as it is found and concluded that appellant's principals have knowingly and wilfully failed to file an application requesting Commission consent to their acquisition of control of Broadcasting Service Organization, Inc., thus contravening the provisions of Section 310 (b) of the Communications Act.

4. The Findings of Fact and Conclusions of the Decision are not supported by substantial evidence and are arbitrary and capricious in finding and concluding that appellant, or its principals, do not possess the necessary character qualifications for a licensee of a radio station

and, therefore, cannot be entrusted with the responsibilities of a licensee.

5. The Findings of Fact and Conclusions of the Decisions are not supported by substantial evidence and are arbitrary and capricious in finding and concluding that the public interest, convenience and necessity will not be served by a grant of renewal of license of Station WORL to appellant.

6. The Findings of Fact and Conclusions of the Decision are not supported by substantial evidence and are arbitrary and capricious in finding and concluding that appellant, or its principals, have engaged in misrepresentations or deceptions on the Commission or concealed information from it, or wilfully failed to file application for consent to transfer of control of Station WORL, without also finding and concluding that appellant, or its principals, had a motive or reason for such misrepresentation, deception, concealment, or wilful failure to file a transfer application.

7. The Commission is in error in its April 21, 1947 Decision in failing to concur in the Findings and Conclusions of E. K Jett, one of its members, that the record does not disclose any motive by appellant or its principals for not reporting information to the Commission and that none of the parties of appellant are guilty of having made false statements and concealments which were designed to mislead the Commission.

8. The April 21, 1947 Decision is in error in failing to find and conclude, in accordance with the evidence, that appellant and its principals have at all times acted in good faith with the Commission; and all reports and data filed by appellant and its principals were believed to be true and accurate and in accord with the facts.

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9. The Commission erred in adopting its Memorandum Opinion and Order of October 15, 1947, reaffirming its April 21, 1947 Decision and, in necessary effect, denying appellant's May 13, 1947 Petition for Rehearing.

10. The Commission erred in its April 21, 1947 Decision and October 15, 1947 Memorandum Opinion and Order in denying appellant's renewal application solely because appellant "does not possess the necessary character qualifications for a licensee of a radio station" without the character or integrity of appellant or its principals having theretofore been in issue and without appellant having been afforded notice of such issue or an opportunity, as requested, to introduce evidence on such issue at a further hearing.

11. The Commission erred in its April 21, 1947 Decision and October 15, 1947, Memorandum Opinion and Order in finding and concluding that appellant "does not possess the necessary character qualifications for a licensee of a radio station" when the uncontradicted and only evidence in the record on character considerations is that the principals of appellant are successful men of high business and professional standing, with wide experience in the fields of government, radio, and law.

12. The Commission erred in its April 21, 1947 Decision and October 15, 1947 Memorandum Opinion and Order in summarily dismissing as moot application B1-TC-506 for a transfer of control to Bitner Broadcasting Company and in not affording appellant and Bitner a hearing on this application as required by Section 309 (a) of the Communications Act.

13. The Commission erred in its April 21, 1947 Decision in failing to grant without a hearing application B1-TC-506 for transfer of control of appellant from its

present stockholders to Bitner Broadcasting Company, a corporation having no present connection with Station WORL.

14. The Commission erred in its April 21, 1947 Decision and October 15, 1947 Memorandum Opinion and Order in finding and concluding that appellant cannot be entrusted with the responsibilities of a licensee without substantial evidence in the record to support such finding and conclusion and in the face of uncontradicted evidence in the hearing record that appellant has borne its statutory responsibilities as a licensee well for many years and is rendering an outstanding program service and public service to Boston and environs.

15. The April 21, 1947 Decision is in error in failing to find and conclude, in accordance with the uncontradicted evidence, that ever since November 27, 1938, the Commission has been on notice from appellant that a majority of its stock is held by its present principals, yet the Commission had never requested or required that appellant file application for consent to transfer of corporate control under Section 310 (b) of the Act.

16. The Commission erred in its Memorandum Opinion and Order of October 15, 1947 in arbitrarily reaffirming its April 21, 1947 Decision without change and in failing to render a decision on several of the points raised by appellant in its May 13, 1947 Petition for Rehearing, in the oral argument thereon, and in the detailed brief filed in support thereof.

17. The Commission erred in failing to adopt the Proposed Findings and Conclusions of appellant, based on the evidence in the record, which appellant submitted January 13, 1945.

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18. The Commission erred in failing to modify its Proposed Decision of October 24, 1945, in the manner and to the extent requested by appellant in its Exceptions to the Proposed Decision filed November 26, 1945.

19. The Commission erred in its April 21, 1947 Decision and October 15, 1947 Memorandum Opinion and Order in failing to find, in accordance with the evidence in the record, that appellant is legally, technically, financially, and otherwise qualified by law to be a licensee of a radio station and accordingly should be granted a renewal of license for the continued operation of Station WORL.

Relief Requested

Appellant prays that this Court, pursuant to Section 402 (e) of the Communications Act and Section 10 (e) of the Administrative Procedure Act, review the action of the Commission and upon such review reverse the Commission's Decision of April 21, 1947, and Memorandum Opinion and Order of October 15, 1947, and remand the matter to the Commission to carry out its judgment.

Respectfully submitted,

Broadcasting Service Organization, Inc.

Fisher, Wayland, Duvall and Southmayd, Its Attorneys.

By John P. Southmayd

Address:
902 Warner Bldg.
Washington 4, D. C.

Dated:
November 3, 1947.

[Filed—May 27, 1944.]

3 Application for Renewal of Standard Broadcast Station License

Call Letters WORL

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

Submit in triplicate direct to the Federal Communications Commission, Washington, D. C. Swear to at least two copies.

Before executing application, see Communications Act of 1934, as amended, Part I (Rules of Practice and Procedure), Part III (Standard Broadcast Rules) and sec. 43.1 of the Commission's Rules and Regulations, and the Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

To the Federal Communications Commission:

1. Name of applicant—Broadcasting Service Organization, Inc.

2. Post-office address: Street and number—216 Tremont Street. City—Boston. State—Massachusetts.

3. Is applicant a citizen of the United States? Yes.

4. Is the applicant a representative of an alien or foreign government? No.

5. Give the file number and date of the license sought to be renewed—File No. B1-S-205 December 1, 1942—August 1, 1944 (Modified—November 6, 1942).

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6. Operation authorized by the existing license and for which renewal of license is requested: (a) Frequency—950 kilocycles. (b) Power: (1) Night None watts. (2) Day—1000 watts. (c) Hours of operation

January	8:15 a.m.-5:30 p.m.	May	5:30 a.m.-8:00 p.m.
February	7:45 a.m.-6:15 p.m.	June	5:00 a.m.-8:15 p.m.
March	7:00 a.m.-6:45 p.m.	July	5:15 a.m.-8:15 p.m.
April	6:00 a.m.-7:30 p.m.	August	5:45 a.m.-7:45 p.m.
		Sept.	6:30 a.m.-7:00 p.m.
		October	7:00 a.m.-6:00 p.m.
		Nov.	7:30 a.m.-5:30 p.m.
		December	8:00 a.m.-5:15 p.m.

• • • • • • • •

7 16. Applicant waives any claim to the use of any particular frequency, or of the ether, as against the regulatory power of the United States, because of the previous use of the same, whether by license or otherwise, and requests a renewal of its existing license in accordance with this application.

Dated this 25th day of May, 1944.

BROADCASTING SERVICE ORGANIZATION, INC.
(Must correspond with item 1) Applicant.

By HAROLD D. LAFOUNT
President.
Official.

• • • • • • • •

[Filed—July 8, 1944.]

16 **Bill of Particulars**

76436

FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.

Docket No. 6626—File No. B1-R-205

NOTICE

IN RE APPLICATION OF Broadcasting Service Organization, Inc. (WORL)

DATE FILED May 27, 1944

FOR Renewal of License (Main and Auxiliary)

CLASS OF SERVICE Broadcast

CLASS OF STATION BROADCAST

LOCATION Boston, Mass.

OPERATING ASSIGNMENT SPECIFIED

Frequency 950 kc
Power 1 kw—500 w Auxiliary
Hours of Operation—Daytime
Auxiliary—For Auxiliary Purposes only.

You are hereby notified that the Commission has examined the application in the above-entitled case and has designated the matter for hearing for the following reasons:

1. To determine who are the present owners of the stock of the applicant corporation, and when and from whom said stock was acquired.

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2. To determine whether the license granted to the applicant corporation, or the rights or responsibilities incident thereto, have been in any manner, either directly or indirectly, transferred, assigned, or disposed of without the consent of the Commission, as provided by the Communications Act of 1934, as amended, and particularly Section 310(b) thereof.

3. To determine whether the statements and representations made in the various applications, documents, and reports filed with the Commission on behalf of the applicant, by its officers, directors, and/or agents, have fully and accurately reflected the facts concerning the ownership and distribution of the stock of the company.

4. To determine whether the applicant's officers, directors, stockholders, and/or agents, or either of them, have made false statements and representations to the Commission as to the ownership, transfer, and/or control of the stock of the applicant.

5. To determine whether all contracts and agreements which have been entered into by applicant's officers, directors, stockholders, and/or agents, relative to the sale and transfer of the stock of the applicant corporation, have been reported to the Commission as required by Section 43.1 of the Rules and Regulations.

6. To determine whether in view of the facts adduced under the foregoing issues, public interest, convenience, or necessity would be served by granting the instant application.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in

accordance with the provisions of Section 1.382(b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of Section 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

Broadcasting Service Organization, Inc.,
Radio Station W O R L
610 Beacon Street,
Boston 15, Massachusetts.

Dated at Washington, D. C., Jul 8 1944

By the Commission.

T. J. Slowie,
Secretary.

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Transcript of Hearings

30 BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

(Broadcast)

WASHINGTON, D. C.

Friday, September 22, 1944

DOCKET No. 6626

In the Matter of

BROADCASTING SERVICE ORGANIZATION, INC.

Boston, Massachusetts

Call Letters: WORL

Application for Renewal of License (Main and Auxiliary): frequency requested, 950 kc.; power requested 1 kw. Main, 500 w. Auxiliary; daytime, Main; auxiliary purposes only, Auxiliary.

The above-entitled matter came on for hearing before P. W. Seward, Trial Examiner, in room 6121 New Post Office Building, Washington, D. C., at 10:00 o'clock a. m.

APPEARANCES:

On behalf of the Applicant:
BEN FISHER, Esq. and CHARLES V. WAYLAND, Esq., Earle Building, Washington, D. C.

On behalf of the Federal Communications Commission:
LEONARD H. MARKS, Esq. and PETER SHUEBRUK, Esq.

31 PROCEEDINGS

The Examiner: The matter on hearing before the Federal Communications Commission this morning is Docket 6626, Broadcasting Service Organization, Incorporated, Boston, Massachusetts, licensee of Radio Station WORL, application for renewal of license.

Is the Applicant present and ready?

Mr. Fisher: The Applicant is present and ready, represented by Fisher and Wayland.

The Examiner: Is the Commission ready?

Mr. Marks: Yes, the Commission is ready. The appearances have been entered.

The Examiner: I have been appointed by the Commission to preside as Examiner at this hearing.

I have delivered to the court reporter a copy of said appointment and ask it be copied in the transcript of this record and filed in the docket as part of the record in this case.

(The order of designation referred to is as follows:)

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

Docket No. 6626

In re Broadcasting Service Organization, Inc. (WORL) Boston, Massachusetts.

For Renewal of License—Main & Auxiliary.

32 ORDER

IT IS ORDERED, That P. W. Seward BE, AND HE IS HEREBY, assigned to preside at the hearing in the above-entitled matter, scheduled for Friday, September 22, 1944.

FEDERAL COMMUNICATIONS COMMISSION,

S-E-A-L /s/ T. J. Slowie
Secretary.

Dated September 22, 1944.

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The Examiner: Are you ready to proceed, gentlemen, or are there any preliminary matters to be considered first?

Mr. Fisher: The Applicant is ready.

The Examiner: All the witnesses now in the courtroom, please stand and be sworn.

(The witnesses were duly sworn.)

The Examiner: Call your first witness, Mr. Fisher.

Mr. Fisher: Mr. Harold A. Lafount.

Whereupon,

HAROLD A. LAFOUNT, a witness called for and on behalf of the Applicant, having first been duly sworn, was examined and testified as follows:

Direct examination by Mr. Fisher:

Q. Mr. Lafount, will you state your name and address?

A. Harold A. Lafount, 501 Madison Avenue, New
33 York, New York.

Q. What is your present occupation?

A. Radio executive.

Q. How long have you participated or acted in that capacity, Mr. Lafount?

A. Approximately ten years.

Q. And before that time, just briefly—I don't want to go into too much detail—what position did you hold and what businesses did you perform, and what Government positions did you hold?

A. I was a member of the Federal Radio Commission from 1927 until June, 1934. Do you want me to go on?

Q. Before that, just briefly, were you in business for yourself, and if so what types of business, and so forth?

A. Well, many different types. In the colonization construction business, in the drug business, the limerock business. I can give you the names of the corporations if you wish.

Q. Just generally, how many years were you in these different businesses, approximately?

A. From 1905 to 1927.

Q. And where were your headquarters?

A. Salt Lake City, Utah.

Q. You came back to the Government from Salt Lake City, Utah, in 1927, is that correct?

34 A. Yes.

Q. These businesses you testified to were located in that vicinity?

A. Some of them, Mr. Fisher. Some were in Idaho, and my largest investments, which were approximately $1,500,000, were in California.

Q. And you say for approximately 20 years you participated and devoted your time to these various industries and businesses?

A. That is right.

Q. Then, you were appointed by the President on the Federal Radio Commission, is that right?

A. That is right.

Q. You continued on that Commission until it expired and was taken over by the Federal Communications Commission?

A. That is correct.

Q. You are not a lawyer, are you?

A. No, sir.

Q. At that time you went out in private practice, private business, and have been occupying this position since?

A. That is correct.

Q. Just briefly, who are your associates, particularly, and whom have you been working for during this 10-year period?

A. Particularly Mr. Arde Bulova.

Q. And in fact you have been working for him and with him during the past 10 years continuously?

35 A. That is correct.

Q. Very closely?

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A. Very closely.

Q. Having charge of all his radio matters?

A. That is right.

Q. Just for the record, did he have any radio stations at that time?

A. No, sir, not that I know of.

Q. You were more or less employed to direct his radio affairs from the beginning?

A. That is right, and, of course, that was all done in connection, too, with his counsel.

Q. That is right. He had counsel.

A. You are the counsel in Washington, and he had a counsel in New York.

Q. Accountants, and so forth?

A. That is right.

Q. Now, during this association, did Mr. Bulova, with your direction, get control of various radio stations?

A. Yes, he purchased radio stations and he became interested with others in radio stations, and some of them I supervised their construction, and, as a matter of fact, supervised his investments to the extent of, oh, around $2,000,000.

36 Q. Will you just briefly enumerate the call letters of the stations that Mr. Bulova himself had been interested in or is interested in?

A. WNEW and WOV, New York, WEL in New Haven, he was interested in. That has been sold and not yet completely paid for, but adjustments are to be made in a very short time. WNBC in Hartford, WCOP in Boston, and WPEN in Philadelphia.

Q. And that is the extent of his railroad holdings?

A. At the present time, Mr. Fisher. Of course, he bought other stations. He bought stock from the Paulus Fathers, and one from the Atlantic City, but they have been consolidated into one.

Q. Into WNEW now?

A. That is right.

Q. Now, with reference to WORL, where is that located?

A. In Boston, Massachusetts.

Q. And when did you first become connected with or have anything to do with that station?

A. On or about March 25, 1937.

Q. Now, will you just briefly enumerate to the Commission what your transactions were in connection with that Station WORL from the very beginning, Mr. Lafount?

A. You mean now the negotiations for the purchase of it?

Q. That is right.

A. Oh, I suppose sometime about the 1st of No-
37 vember, 1937, Mr. Crockwell, George A. Crockwell—

Q. 1936. You purchased it in March, 1937.

A. I mean in the first of March, 1937. Mr. Crockwell telephoned me from Boston and asked if he could see me, and then he told me he wanted to sell his interest in the station. The negotiations continued, and I think about the 20th I went to Boston to conclude the negotiations and was very much dissatisfied. Things were not as they had been represented.

Q. Around the 20th of March, 1937?

A. That is right.

Q. Go ahead.

A. They were not anything like they had been represented, and it appeared that I was going to pay far too much for what I was receiving, and I just dropped the whole deal. I returned to New York and Mr. Crockwell called me again and asked me to come back. He felt he had made some kind of arrangement with one of his associates and other stockholders that would enable him to make a better deal, the type of which I did not know at that time, but I returned to Boston. On the 25th of March, 1937, I made a contract, or entered into an agreement of some sort with Mr. Crockwell to buy some stock.

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At that time I was not too sure whose stock it was, but Mr. Crockwell was doing all the negotiating.

Q. Now, as to this stock, how much did you agree to buy, Mr. Lafount?

38 A. At that time, 400 shares.

Q. Of what type of stock?

A. The common voting stock.

Q. Were there two types of stock?

A. Yes, sir.

Q. What were they?

A. Common and preferred, A and B, the A being the preferred and B being the common.

Q. How many shares of each?

A. 1,000.

Q. All right. Go ahead.

A. Mr. Crockwell told me that he was ready to deliver his 400 shares for the sum of $48,000. I do not want to burden the record, Mr. Fisher. If I am telling too many details you please stop me.

Q. Go ahead and tell the details.

A. The idea was that the obligations of the corporation, which were many, should be paid out of the money which I was to pay to Mr. Crockwell. At that time, I did not know how much, but it seemed from what I was told that it might take nearly all of it to pay the obligations. Then, Mr. Crockwell told me that he had arranged with Mr. Nordblom to sell 300 shares of his stock, which was common voting stock.

Q. Let me stop you right there?

A. Yes.

39 Q. This 400 shares, who was that to come from?

A. Well, it did come from a Mr.—

Q. Eynon?

A. A Mr. Eynon and Mr. Phelan.

The Examiner: How much each?

The Witness: 150 shares each.

By Mr. Fisher:

Q. How much from Nordblom?

A. 100 shares from Nordblom.

Q. Did that make up the 400 shares?

A. That made up the 400 shares that were to come to me.

Q. That you agreed to buy?

A. That I really bought.

Q. Now, go ahead from there.

A. Then, Mr. Crockwell told me that he had made arrangements with Mr. Nordblom to dispose of 300 shares. Before I went to Boston I had a talk with Mr. Sanford Cohen about the whole transaction many times, because it was to be one that was definitely a venture of my own, and Mr. Sanford Cohen had expressed a desire to participate, if I felt it was a good deal, so when I was told that Mr. Nordblom's stock could be bought, I think, for the sum of $4500, that seemed like a very logical thing to do, so I called up Mr. Cohen and Mr. Cohen said, "Yes, buy it for us."

Q. What did he mean by "us"?

40 A. I knew he meant he and his brother.

Q. What was his brother's name?

A. George.

Q. Now, right here, let us get the connection as to who the Cohens are.

A. Yes, sir.

Q. Who are George and Sanford Cohen?

A. They are attorneys for Mr. Bulova, and I think most of his interests.

Q. And were at that time?

A. And they were and have been for many years.

Q. In other words, as I see it, and for the purpose of the record, you were more or less the general manager of the radio interests of Mr. Bulova and Mr. George and Sanford Cohen were two brothers that were lawyers in New York City and were doing the legal work for Mr. Bulova?

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A. That is right.

Q. That is how you became connected with them and knew them?

A. Yes.

Q. All right, go ahead with the transaction.

A. Mr. Cohen said, "By all means buy it."

Q. What did that make the purchase price then?

A. It made the purchase price $52,500 for their interest and mine.

41 Q. And did you make any arrangements with them, tentative arrangements, about the distribution of that amount of money and who was to pay how much?

A. Oh, yes. Of course, obviously I did not like to be making a deal that they pay $4500 for 300 shares and paying $48,000 for mine, and they said, "We will divide the amount on the basis of so much per share and make your cost $30,000 and ours"—I think—"$22,500."

Q. Now, did you pay this amount of money to Mr. Crockwell or to someone up there?

A. I paid the money.

Q. Whom did you pay it to?

A. I think I paid it— Mr. Fisher, it is some time ago, but I think I gave it to Mr. Davison, our Boston attorney.

Q. Who is Mr. Davison?

A. He is a member of a rather large and I think important law firm in Boston, and had been connected with the station, was attorney for Mr. Nordblom, and he was attorney for the hotel in which the radio station was located, and the money was paid to him.

Q. And he was to pay all these debts, wasn't he?

A. He was to pay all of the debts.

Q. In other words, the money all passed through him?

A. Yes.

Q. And do you remember how you paid that?

42 A. I am 99 percent sure it was a cashier's check, and the money was provided by Mr. Bulova.

Q. The money was provided by Mr. Bulova?

A. That is right.

Q. A cashier's check?

A. A cashier's check.

Q. As I understand, you haven't that cashier's check now?

A. No.

Q. That is the way the money was paid?

A. That is right.

Q. Explain about the money you got from Mr. Bulova. Did you have a running account at that time?

A. Yes, I did, I had a running account with Mr. Bulova and do now have it. That always existed. At that time, Mr. Bulova happened to be in my debt. At about that time, before we made the deal, I think he was in my debt to the extent of about $12,000, $12,400, I believe, to be exact, as nearly as I can figure it. That meant that my accounts would not permit me drawing the money that fast without making some arrangements, and he said, "go ahead and draw this money and any other money that you may need. It is always perfectly all right."

Q. And you did get that money from Mr. Bulova to pay all cash up there at the time the deal was made?

43 A. That is correct, yes.

Q. As a matter of fact, before that time and since that time, did you have the same kind of running account back and forth, running into thousands of dollars?

A. Yes. It varies at different times. I think it has been up to as much as—where I have advanced as much as $60,000, and then down to where I owed him money.

Q. At this time, you owed him approximately $40,000, then?

A. That is right, as the result of this deal, I and Mr. Sanford Cohen.

Q. And at different times during this period of time, Mr. Lafount, have you had charge of the purchasing of all of his radio interests?

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A. Yes, sir.

Q. And you say they amounted to about $2,000,000 during that time?

A. Yes.

Q. That more or less went through this account?

A. That is right.

Q. You would get money from Mr. Bulova?

A. That is right.

Q. Just for the record, do you remember some of the large transactions where you got Mr. Bulova's money to complete some of these different deals?

44 A. Oh, yes. I secured $300,000—

Q. That is what I mean.

A. —at two or three different times I secured $300,000. That seemed to be a rather set figure. I know that was approximately what he paid for the Atlantic City station, and I know that that was approximately what he paid for WOV.

Q. That was the way your transactions were with him over this 10-year period? That is the point I want to make.

A. That is right. Those accounts never did go into my bank account.

Q. You would draw on him for that, in other words?

A. That is right.

Q. And did on numerous occasions?

A. Many occasions.

Q. At this particular time, you did get the money from Mr. Bulova, the $52,500?

A. I did, yes.

Q. That was turned over to Mr. Davison?

A. That is right.

Q. Then, what happened with reference to the stock as the result of that transaction?

A. Well, the 400 shares that came from the three individuals I named a moment ago, the stock was transferred

to me and a stock certificate issued for 400 shares in my name.

Q. That was reported to the Commission almost
45 immediately?

A. That is right.

Q. What happened to the other 300 shares?

A. The other 300 shares I received personally. It was mailed to me for, of course, Mr. Sanford and Mr. George Cohen, but it was sent by Mr. Davison to me, oh a month, I should think, or two months later, but I received it and it was turned over to Mr. Cohen.

Q. And it was turned over to Mr. Cohen at that time?

A. That is right.

Q. Was that ever transferred into their names at that time?

A. No, sir.

Q. Was that reported to the Commission at that time?

A. No, sir.

Q. Now, what was the reason that was not transferred to their name and why it was not reported, if you know, Mr. Lafount?

A. I know, Mr. Fisher, because it was a problem for many years. I think approximately two months after this deal was concluded, I had seen, I think I had seen Mr. Crockwell only once or twice during the first two months when he had complained and told me that he wanted to buy the station back, but in two or three months—two months, or eight or nine weeks, such a matter, then he started to call on me, and he telephoned, and he
46 called I think dozens of times telling me that Mr. Nordblom's deal was not satisfactory to Mr. Nordblom, and he had to do something about it.

Q. In other words, he was not satisfied with this arrangement?

A. Not at all, and he told me that he had to get the station back, and he applied all sorts of tactics; he tried every way on earth to embarrass me by telling me that the deal was unsatisfactory to Mr. Nordblom.

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Q. And that had to do primarily with this 300 shares of stock?

A. Yes.

Q. That Mr. Cohen had in his possession?

A. That is true. I had no negotiations with Mr. Nordblom.

Q. It had been done, all, through Mr. Crockwell?

A. It had been, all, through Mr. Crockwell.

Q. That continued for how long?

Q. Well, it continued for, oh, I should think a year and a half or two years. Then, another thing happened, which is probably ahead of the story.

Q. You better bring it in right here.

A. Another thing happened, Mr. Fisher. Then, came some claim from a Mrs. Whitwell, and I was told that she actually owned all of the stock.

Q. This is from Crockwell, now?

47 A. This is from Crockwell.

Q. This is about two years later?

A. Just about two years later, I think probably two years, I am not too sure about that, Mr. Fisher, but about that.

Q. In 1939?

A. Yes, it was in 1939.

Then, we had claims and counter claims from attorneys and Mr. Crockwell to the effect that that stock—I understood at that time all of it belonged to her, in her opinion.

Q. That is what he claimed?

A. That is what he claimed. The common stock and the preferred stock, all of it, that which had been recorded in my name, the whole thing, the station, 100 percent of both classes of stock, belonged to her. Then, we had some suits and claims, and we went through the courts in Boston. They brought suit against the corporation, WORL, or the Broadcasting Service Organization, Incorporated, and those suits were finally disposed of and the court found in favor of the defendant.

Q. The Broadcasting Service Organization, Incorporated?

A. The Broadcasting Service Organization, Incorporated.

Mr. Fisher: Now, the purpose of this, of course, your Honor, is to show why the stock was not registered at the beginning.

By Mr. Fisher:

48 Q. All these things went on then for several years, is that right?

A. That is right.

Q. It never was during these years you are talking about transferred on the books to Mr. Cohen?

A. No.

Q. It remained in the name of Nordblom?

A. That is correct.

Q. As a matter of fact, did Mr. Nordblom continue as a director in the corporation?

A. As soon as I found out that there was some question, I asked Mr. Nordblom, I said, "Now, I understood you are not entirely satisfied. I don't want to get into your fight with Mr. Crockwell, but since there is a fight shall I continue to hold the stock, and if so, will you remain on the board until this matter is adjusted?" He said, "That is perfectly satisfactory to me."

Q. And he did stay on the board?

A. He did stay on the board.

Q. He was a director?

A. Yes, and he was very, very decent about it.

Q. Going back again, because you are getting ahead of the story here, at the time then that you registered your 400 shares of stock in 1937, Mr. Nordblom still had the 300 shares in his name, that is, both on the corporate
49 stock books and the Commission records. Who owned the other 300 shares then of the common voting stock?

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A. Mr. Crockwell had 200 shares and Mr. Nordblom 100 shares.

Q. So the status would be then, during 1937, we will say, in order to keep the record straight, you had 400 shares, Mr. Nordblom had 400 shares and Mr. Crockwell had 200 shares?

A. That is right.

Mr. Marks: That is according to the records?

Mr. Fisher: That is according to the stock records.

By Mr. Fisher:

Q. You say this matter of the 300 shares continued for a number of years. I think I stopped you there. How long did it continue and when was it finally adjusted or consummated or completed?

A. Well, Mr. Fisher, we made a final settlement with Mr. Nordblom in November of 1943.

Q. Over six years?

A. That is right.

Q. At that time, when you made this final settlement, did you have to pay Nordblom more money?

A. Yes, I paid him $750 more. It was considerably less than I thought we were going to have to pay or what we would have had to pay if an adjustment had been
50 made years previous.

Q. Who was that $750 paid for?

A. That $750 was paid for Mr. George Cohen and Mr. Sanford Cohen. Obviously, mine was all paid for.

Q. At that time, last November, 1943, you made a final adjustment with Mr. Nordblom on this stock?

A. Yes.

Q. Did you receive a receipt from Mr. Nordblom in final settlement of that stock?

A. Yes, sir.

Mr. Fisher: I ask to have this marked as Applicant's Exhibit No. 1, for Identification.

(The document referred to was marked as Applicant's Exhibit No. 1, for Identification.)

By Mr. Fisher:

Q. I hand you herewith Exhibit 1 for Identification and ask you to identify that.

A. Yes, sir, that is the photostatic copy of the original.

Q. And that is the final receipt you received after paying $750?

A. Yes, sir.

Q. Some six years later?

A. Yes, sir.

Q. Then were steps taken to divide up the stock and report it to the Commission?

A. Well, I cannot tell you about steps being taken
51 to divide it up. I think the Cohens divided it up the way they wanted to between themselves. They were brothers. Mr. Sanford Cohen took 400 shares of it.

Q. Of this 300 shares?

A. I am sorry. Yes, of the 300. I think it was 200 and 100, Sanford 200 and George 100.

Q. And that was reported to the Commission then?

A. Yes.

Q. That is the first time that that had been reported to the Commission?

A. That is right.

Q. And that was, of course, the first time the stock had actually been placed on the records in the names of the Cohens?

A. That is correct, Mr. Fisher. I can tell you extremely briefly, something that cost thousands of dollars and hundreds of hours of worry and problems in connection with claims of other people on this stock. I dislike saying this, but I found that lawyers buying stock were a good deal more careful than the average business man, and it was rather difficult to persuade the Cohens to go into this while

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there was any claim or any suggestion that someone else made on it.

Q. Is that one of the reasons why they did not complete the deal and take the stock definitely into their names?

A. That is right.

52 Q. Now, just briefly on the other 300 shares of stock that we have not discussed here. The 200 shares that Mr. Crockwell had, I will have Mr. Cohen testify to what happened to that 200 shares, but just briefly what happened to the 200 shares that Mr. Crockwell had?

A. He borrowed $5,000.

Q. From whom?

A. Mr. Bulova, at my request.

Q. At your request?

A. Yes. I did not want to lend the money because I was associated with him, and I thought it was the proper thing to do.

Q. You did not lend it to him?

A. I did not lend it to him. Mr. Bulova loaned him 5,000 and took the 200 shares of stock as security.

Q. What happened to that?

A. He was unable to pay the note when it was due. It was foreclosed, and Mr. Sanford Cohen bought it.

Q. You remember the transaction. How much did he buy it in for?

A. I think it was bid in for $100.

Q. But it had the $5,000 obligation of Mr. Bulova's against it?

A. That is right, he assumed it because I guaranteed it and Mr. Cohen guaranteed it, because obviously

53 it was stock Mr. Cohen was interested in, and not I—none of us were interested in at that time, as a matter of fact. I told Mr. Bulova I would see he got his money back.

Q. Mr. Cohen assumed the obligation when he bought it in for $100?

A. That is right.

Q. That was reported in due course to the Commission?

A. That is right.

Q. That 200 shares about 1938 or 1939 was reported to the Commission?

A. Yes, sir.

Q. Then, on November 27, 1938, that was reported to the Commission, that 200 shares of stock from George Crockwell to Sanford Cohen. Then, in 1938 that would show 400 shares to you and 200 shares to Sanford Cohen, isn't that right, out of the 1,000?

A. Yes.

Q. With this other 300 shares still in conflict at that time?

A. Yes.

Q. That left the remaining 100 shares. Who owned the 100?

A. Mr. Nordblom.

Q. What happened to that, if you remember?

A. Mr. Cohen bought that. I did the negotiating,
54 but Mr. George Cohen bought that.

Q. That was his final venture in that corporation?

A. As far as the records show, yes.

Q. He was sitting in with Mr. Sanford Cohen on the 300 shares?

A. That is right.

Q. As far as you know?

A. That is right.

Q. He bought that 100 shares. Do you remember how much he paid for it?

A. I think it was $1500, Mr. Fisher.

Q. That was in due course reported to the Commission?

A. Yes, sir.

Q. And that then would be the final purchase of the common stock that we are talking about?

A. Voting stock, that is right.

Q. That would make the ownership at the present time or when this adjustment was made last November, in what proportions?

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A. 400 shares to myself, 400 shares to Mr. Sanford Cohen and 200 shares to Mr. George Cohen.

Q. Is that the present status of it?

A. Yes, sir.

Q. Now, this preferred stock or Class A stock, will you briefly enumerate what became of that and who purchased that?

55 A. The first I knew and remember and recall, at this time, about that stock was that Mr. Davison either wrote or telephoned or told me that 900 shares had been used as collateral to a loan made by Mr. Crockwell.

Q. 900 shares of this Class A stock?

A. 900 shares of this Class A stock.

Q. Preferred?

A. Preferred, had been used as collateral by Mr. Crockwell, and he had borrowed from a real estate corporation or an individual in the real estate business, I think approximately $2400, and Mr. Davison said that this note was due and that the collateral was to be sold at auction.

Q. Do you remember about when that was? Was that in March, 1939, about?

A. Yes.

Q. About March, 1939?

A. Yes, 1939.

Q. Go ahead now.

A. He advised me to buy it. So, I authorized him to bid it in at approximately $2,450, which he did, and that 900 shares came to me for that amount of money through that public sale, which was the foreclosure of a note given by George Crockwell.

Q. That was in 1939. Do you remember when you 56 reported that? That was not reported right away, was it?

A. No, it was not, Mr. Fisher. I know it should have been reported, although it was not voting stock and I did not think it was too serious, but I recall I received a letter from you telling me that an application for—I don't know,

I think renewal of license, or for increased power or something, showed me the owner of 900 shares of stock. I am sure I got a letter from you telling me that the Commission wanted to know if I owned that stock and why I had not reported it.

Q. That was about a year later, wasn't it?

A. That was about a year later. I immediately reported it. But may I also inject this, which might not be quite proper, but it seemed there were so many attorneys connected with this, with Mr. Davison and the Cohens being lawyers—

Q. And Fisher.

A. Mr. Fisher, Mr. Wayland, and so on—I suppose I will take the blame, but it was not reported.

Q. It was not reported for about a year, and if it was not reported, was it an oversight on your part?

A. It certainly was, Mr. Fisher. I was shocked when I got your letter, I recall.

Q. Now, this other 100 shares, what happened to that, the rest of the preferred A stock? Whom did that belong to?

A. That belonged to a Mr. Endlar.

57 Q. Endlar—E-n-d-l-a-r, Lester Endlar?

A. That is right, yes, sir.

Q. What happened to that?

A. That I purchased.

Q. You purchased that direct from Mr. Endlar?

A. I purchased that direct from Mr. Endlar. That was negotiated by Mr. Davison and purchased from Mr. Endlar.

Q. He handled that deal?

A. Yes.

Q. Do you remember the approximate price of that?

A. I think that was $3,100.

I think it was reported at $3500, but that included the expense, and so on.

Q. The legal fees, and so on?

A. Legal fees, and so on, but I think the actual amount I paid him was $3100 or $3,150 it could have been.

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Q. Do you remember about what time that was?

A. That was 1939 or 1940.

Q. September in 1940, wasn't it?

A. September in 1940?

Q. Yes.

A. I know at that same time we—Let me see. The same time we bought the 100 shares from Mr. Nordblom.

Q. That was round the last of 1940?

A. Yes, I think it was September, 1940.

58 Q. If that was reported in April, 1941, why had not that been reported then, Mr. Lafount, if you remember?

A. I do not recall. It was certainly an oversight if it was not.

Q. Now, with reference to the payments for this stock and the arrangement with you and the Cohen brothers, you say the original arrangement was some $30,000 to you and $22,500 to them. Afterwards was that adjusted or changed for any reason, and if so, please state.

A. Yes, it was later adjusted, particularly for the reason that I purchased the preferred stock, 900 shares for $2,450, and 100 shares for $3,100.

Q. $3,500?

A. $3,500, yes, which made a total of something like—

Q. $5,950?

A. Something like $5,950.

Q. For all of the 1,000 shares?

A. For all of the preferred stock.

Q. For all of the preferred stock?

A. That is right.

Q. What did that show on the books as far as value is concerned?

A. Face value of $44,000.

Q. $400 a share?

A. $400 a share.

59 Q. Does that still stand on the books?

A. Yes, sir, that is right. Since that was to be

put in good standing and recognized, and so on, it appeared that I was getting a tremendous advantage over my partners so an adjustment was made, so that the price of their stock was still reduced a little as the result.

Q. Just with reference to this price of stock and the payments, all this time, of course, Bulova was the man that had loaned the money, isn't that correct?

A. How?

Q. He is the man that loaned the money?

A. The original money, yes.

Q. The payments were made back to Bulova by you and the Cohen brothers?

A. Yes, sir.

Q. From time to time?

A. Yes.

Q. When you made this final adjustment, did they take care of their part and you take care of your part?

A. The way that was arranged, Mr. Fisher, it seemed little use, since Mr. Cohen was Mr. Bulova's attorney, of him handing me a few thousand dollars and then me handing it to Mr. Bulova, to pay direct to Mr. Bulova.

Q. And you paid direct to Mr. Bulova?

A. I paid direct to Mr. Bulova.

60 Q. Did they have a running account like you testified as to yourself with Mr. Bulova all these years?

A. I believe that is true. I heard both of them say so. I have never had to handle their business, but I heard both of them say they did.

Q. Did you finally get all of your money paid back to Mr. Bulova?

A. Yes, sir.

Q. When was that finally paid back, as nearly as you can remember?

A. I can remember, because the last payment was rather recent, Mr. Fisher. I gave Mr. Bulova $20,000, which overpaid him, in, I think, November, 1943.

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Q. November, 1943?

A. Yes, sir.

Q. About the same time that these final deals—

A. That is right.

Q. That these final deals were made with Mr. Nordblom?

A. That is right.

Q. Mr. Lafount, just a few words with reference to the station now. You say when you took it over there were numerous indebtednesses against it and the station was in a bad way, as it were, financially?

A. Very bad, Mr. Fisher.

Q. Just briefly, if you remember, approximately
61 how much of that $48,000 went to pay off debts?

A. More than $38,000.

Q. More than $38,000?

A. Yes, sir.

Q. What was the condition of the station as far as programs and the like were concerned when you took it over?

A. It seemed to be only just a framework, a skeleton.

Q. Just briefly. I did not mean you to go into detail.

A. Yes. It was very, very poor—very poor. The equipment, business, accounts receivable were worthless; it was in very bad condition.

Q. Shortly thereafter, or a year or two thereafter, did you have occasion, you and your associates and directors, to bring in a new manager to the station?

A. Oh, yes, immediately. I had a new manager there shortly after I got my stock.

Q. After that, did you change that management again?

A. Yes, sir.

Q. To whom?

A. To Mr. George Lasker.

Q. When did he take charge of the station?

A. Oh, I do not recall. Four or five years ago.

Q. 1939 or 1940, something like that?

A. I should think it was later than that. I don't know. About 1940, I think.

62 Q. Has he had charge of it under the direction of the board of directors since that time?

A. That is right.

Q. Mr. Lafount, you have charge of the books of the station. What is your capacity; president of the corporation?

A. President, yes.

Q. And has been for several years?

A. Yes, sir.

Q. You have charge of the books of the corporation, haven't you?

Q. Well, as the president does.

Q. They are under your direction and control?

A. Yes, sir.

Q. Have you had a trial balance made as of December 31, 1943, the end of last year?

A. That is right.

Mr. Fisher: I ask to have this marked as Applicant's Exhibit No. 2, for Identification.

(The document referred to was marked as Applicant's Exhibit No. 2, for Identification.)

By Mr. Fisher:

Q. I hand you herewith Exhibit No. 2, for Identification, and ask you if that is the balance sheet of December 31, 1943?

A. Yes, sir.

Q. Was that made under your direction and control?

63 A. Yes.

Q. Are you familiar with the items contained thereon?

A. I am.

Mr. Fisher: At this time, I wish to introduce Exhibit No. 2.

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The Examiner: Any objections?

Mr. Shuebruk: No objection.

The Examiner: Do you wish to offer in evidence Exhibit 1?

Mr. Fisher: Yes. At this time, I wish to offer in evidence Exhibit 1, that I inadvertently forgot to offer.

The Examiner: Any objection?

Mr. Shuebruk: No objection.

The Examiner: Applicant's Exhibits 1 and 2 may be admitted.

(Applicant's Exhibits Nos. 1 and 2 were received in evidence.)

By Mr. Fisher:

Q. Now, just as a matter of comparison, Mr. Lafount, have you checked on the books to show the increase of business on the station from each year since you have had it?

A. Yes, sir.

Q. With the other directors?

A. I have.

Q. After you became interested in this station?

A. That is correct.

Mr. Fisher: I ask to have this marked as Applicant's Exhibit No. 3, for Identification.

64 (The document referred to was marked as Applicant's Exhibit No. 3, for Identification.)

By Mr. Fisher:

Q. I hand you herewith Applicant's Exhibit No. 3, for Identification, and ask you to explain that exhibit.

A. It shows the profit and loss exclusive of taxes.

Q. It also shows the receipts and disbursements, doesn't it?

A. And receipts and disbursements for the years 1938 to 1943, inclusive.

Q. And the year 1938 was the first full year after you had been or had become connected with the station; isn't that correct?

A. Yes.

Mr. Fisher: At this time, I wish to introduce Exhibit No. 3.

The Examiner: Any objection?

Mr. Shuebruk: No objection.

The Examiner: It may be admitted.

(Applicant's Exhibit No. 3 was received in evidence.)

Mr. Fisher: I ask to have this marked as Applicant's Exhibit No. 4, for Identification.

(The document referred to was marked as Applicant's Exhibit No. 4, for Identification.)

Mr. Fisher: Your Honor, we had prepared Ex-
65 hibit No. 4, which is a record of the different stocks and when they were reported to the Commission on your form 730. We have taken them right off your forms here for a matter of reference and a matter of handiness more than anything else. I do not think the Commission has any objection to our putting it in. It may be of use if anything comes up later as to any of these transactions.

The Examiner: It purports to show the various transactions in the stock of the Applicant-corporation as reported to the Commission?

Mr. Fisher: As and when.

The Examiner: Has counsel for the Commission checked this against the records?

Mr. Shuebruk: We would like an opportunity to correct it, if necessary.

The Examiner: In the event there are any errors?

Mr. Shuebruk: Yes.

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Mr. Fisher: I would like to have it introduced as Exhibit 4, subject to that understanding.

Mr. Marks: In connection with that, Mr. Examiner, we have a recapitulation which shows, as of each date, what the total holdings were, which might be associated with this exhibit at any time if it is necessary, so we might incorporate them both as one exhibit. Is that all right, Mr. Fisher?

Mr. Fisher: Yes. I think a recapitulation would
66 serve a good purpose.

The Examiner: Then, Exhibit No. 4, subject to correction for errors if any are found, and when the Commission offers the document referred to by Mr. Marks, that it be associated with this exhibit as 4-A offered by the Applicant or adopted by the Applicant.

Mr. Marks: That is right.

Mr. Fisher: Yes.

(Applicant's Exhibit No. 4 was received in evidence.)

Mr. Fisher: I ask to have this marked as Applicant's Exhibit No. 5, for Identification.

(The document referred to was marked as Applicant's Exhibit No. 5, for Identification.)

Mr. Fisher: Applicant's Exhibit No. 5, your Honor, which is now being offered, is a summary taken out of the stock books themselves as they appear, being the actual stock book record, in summarized form. I grant this is not final. The stock books speak for themselves, but it gives a summary, a very handy summary of each stock, when it was issued.

It is only for reference. I ask that it be admitted as Applicant's Exhibit No. 5.

The Examiner: Does it also show by whom the stock was held during that period of time?

Mr. Fisher: I think this shows to whom it goes to.

The Examiner: All right.

67 Mr. Shuebruk: It shows actually what the stock certificates were.

The Examiner: Has this been checked by Commission counsel?

Mr. Shuebruk: No; I think it is accurate, but we would like a chance to check it.

Mr. Fisher: Here is a good example: Exhibit 4, Eynon, 150, and then the next, Exhibit No. 5, numbers 5 and 6 are the transfer of the Eynon stock. I think it will show where each one of these went from and to whom. I think if you will go over it, you will find over here (indicating) are the transfers from whom to whom.

The Examiner: All this exhibit purports to show is what is reflected by the stock books of the corporate licensee?

Mr. Fisher: That is right.

The Examiner: Any objection?

Mr. Marks: No objection.

The Examiner: It will be admitted, subject to checks for any possible error.

Mr. Marks: That is correct.

(Applicant's Exhibit No. 5 was received in evidence.)

By Mr. Fisher:

Q. Now, you say Mr. Nordblom remained in the corporation as a director all during these years.

A. Well, for three or four years, Mr. Fisher, four or five years, I think until 1942.

68 Q. 1942 or 1943, wasn't it?

A. Yes.

Q. Who are the directors now?

A. Mr. George Cohen, Mr. Sanford Cohen, and I.

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Q. What is Mr. Davison? Does he hold some official capacity?

A. The clerk.

Q. He is the clerk?

A. Yes. Being a Massachusetts corporation, I think the laws of the State of Massachusetts require that each corporation have a clerk and that he reside in the State.

Q. Then, as I understand, you paid $48,000 for the first 400 shares and that money was provided as a loan from Mr. Bulova? That is correct, isn't it?

A. Yes.

Q. It has been repaid to Mr. Bulova?

A. Yes.

Q. And you paid this $5,950 for all of the 1,000 shares of preferred stock?

A. Yes.

Q. Partially by foreclosure of 900 shares and an outright purchase of the other 100 shares?

A. Yes.

Q. The first was reported immediately and the other ultimately was reported?

69 A. Yes, sir.

Q. Now, does Mr. Bulova own any interest in this station, or did he ever have any financial interest himself in this station?

A. Not any, except he loaned monies to us, which was not considered as a loan to the station or anything to do with the station. No note was taken or any obligation. He had nothing to do with the station.

Q. And never has from its inception?

A. No. He refused. I asked him if he was interested in buying it, and he said "No." I said, "Supposing I buy some stock in it?" He said, "Go ahead."

Q. That is how the transaction came up?

A. That is right.

Q. Just one further matter. Mr. Lafount, I think you

said that about 1939 was the first time you had any information with reference to some woman named Whitwell might be having an interest in that stock; is that right?

A. 1939, yes, sir.

Q. About two years after you had been in the corporation?

A. Yes.

Q. Had you had any information before that at all about that matter?

A. Not any.

70 Q. Did you receive a letter from Mr. Crockwell about that matter? Was that your first information pertaining to that?

A. I am not sure that was the first, Mr. Fisher, but it was about that time. I think it was not the first. I believe I had been told by our attorney, Mr. Davison, a week or two before.

Q. You had been told by Mr. Davison a week or two before?

A. Yes.

Q. Then, you did receive a letter from Crockwell?

A. I did, yes, sir.

Mr. Fisher: I ask to have this marked as Applicant's Exhibit No. 6.)

(The document referred to was marked as Applicant's Exhibit No. 6, for Identification.)

By Mr. Fisher:

Q. I hand you herewith Applicant's Exhibit No. 6 for Identification and ask you if that is the letter you received from Mr. Crockwell about this claim of Mrs. Whitwell?

A. Yes, sir.

Q. In May, 1939?

A. Yes, sir.

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Mr. Fisher: At this time, your Honor, I wish to introduce Exhibit No. 6.

71 The Examiner: Has counsel for the Commission examined this exhibit?

Mr. Shuebruk: Yes, no objection.

The Examiner: It may be admitted.

(Applicant's Exhibit No. 6 was received in evidence.)

Mr. Fisher: I just wonder if we can take the original back and substitute a copy?

Mr. Shuebruk: Yes.

By Mr. Fisher:

Q. Then, shortly thereafter did you answer Mr. Crockwell with reference to this letter?

A. I did.

Q. In June, 1939?

A. Yes, sir.

Mr. Fisher: I ask to have this marked as Applicant's Exhibit No. 7, for Identification.

(The document referred to was marked as Applicant's Exhibit No. 7, for Identification.)

By Mr. Fisher:

Q. I hand you herewith Exhibit No. 7, for Identification, and ask you if that is your answer to Mr. Crockwell's letter of May, 1939?

A. Yes, sir.

Mr. Fisher: At this time, I wish to introduce Exhibit No. 7.

72 Mr. Shuebruk: No objection.

The Examiner: It may be admitted.

(Applicant's Exhibit No. 7 was received in evidence.)

By Mr. Fisher:

Q. Then, again, in 1941, that would be almost two years later, did you receive a letter from Mr. Hines, counsel for Mrs. Whitwell?

A. That is right.

Mr. Fisher: I ask to have this marked as Applicant's Exhibit No. 8, for Identification.

(The document referred to was marked as Applicant's Exhibit No. 8, for Identification.)

By Mr. Fisher:

Q. I hand you Exhibit No. 8, for identification, and ask you if that is such a letter as you received from the counsel in 1941 with reference to this matter of the stock ownership?

A. That is correct.

Mr. Fisher: At this time, I wish to introduce Exhibit No. 8.

The Examiner: Any objection?

Mr. Shuebruk: No objection.

Mr. Marks: No objection.

The Examiner: It may be admitted.

(Applicant's Exhibit No. 8 was received in evidence.)

Mr. Fisher: I think that is all on direct.

73 The Examiner: You may cross examine.

Cross examination by Mr. Shuebruk:

Q. Mr. Lafount, I believe Mr. Fisher asked you for the stations in which you had an interest. Can you tell me the stations in which you have been a stockholder?

A. Have been?

Q. Or are.

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A. Yes. I was a stockholder in WELI, and I am a stockholder in WORL, WCOP, WNBC. I think that is all.

Q. What about WNEW?

A. No, sir.

Q. No stock in that?

A. No, sir.

Q. At any time?

A. Yes, I think I had a share or something some time ago in it, but not any substantial amount. I am an officer of the corporation of WNEW.

Q. A vice president and director?

A. Yes.

Q. Of WNEW?

A. Yes, sir.

Q. WAGA, you held a qualifying share in, did you not?

A. Yes, I held a qualifying share in WAGA, one or two shares.

74 Q. Now, in each of those corporations you either are or have been an officer or a director?

A. That is right.

Q. Vice president in all except WCOP in which you are president?

A. That is right.

Q. How long have you been president of WCOP?

A. I think since it was organized.

Q. And which of those stations is Sanford Cohen interested in, has any interest in or is an officer or director in, if you know?

A. I am sorry, I do not recall. I do not know that he has any substantial amount of stock in any of them, but he is an officer, I think, in one or two of them.

Q. And likewise George Cohen is interested in several?

A. Probably as treasurer or secretary.

Q. Either as an officer or a stockholder?

A. I doubt as a stockholder, except qualifying shares. My own recollection is Mr. George Cohen may own as much as 50 shares in one of them, but that is practically nothing.

Q. How many shares do you own on WCOP? There are 5,000 shares of common, I believe, and 500 shares of preferred outstanding.

A. Yes.

Q. 1,450 of common.

75 A. 1,450 of common and 100, I think, of preferred, something like that, or 90 of preferred. I have got a memorandum in my pocket if I might refer to it.

Q. Certainly.

A. 89 shares. 1,950 of common and 89 of preferred.

Q. 1,950 of common?

A. Yes, sir.

Q. And 90 of preferred?

A. No, sir; 48 preferred and 1,950 common.

Q. And in WNBC there were 5,000 of common and 500 shares of preferred outstanding.

A. Yes. I own 1,000 shares of common and 100 shares of preferred.

Q. And WNEW?

A. No, sir.

Q. You owned at one time 900 shares of common in it, I believe.

A. I did, yes.

Q. Out of 10,000 shares of common.

A. Yes, for a few months.

Q. Do you remember whom you sold that to?

A. Yes, I sold it to Mr.—I do not know whether it was Mr. Biow or Bulova, I am not sure. You are talking now about WNEW?

Q. That is right.

76 A. Is that Greater New York?

Q. That is right, Greater New York.

A. How many shares did I own?

Q. 900 of common.

A. I recall very well the shares. I am almost sure they were sold back to Mr. Bulova.

Q. Do you recall the time when you bought them?

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A. No. I only owned them a few months, as I recall it. I think that was two years ago.

Q. Could you have bought them in December, 1941, and sold them in March of 1943?

A. It could have been, but I had no idea it was so long ago.

Q. Now, in WELI there were 5,000 shares of common and 500 of preferred outstanding. You owned how many?

A. 1,000 shares of common and 70 of preferred.

Q. And in WAGA, out of 250 shares of common, you owned 1 share?

A. That is correct, just a qualifying share.

Q. For how long, do you remember?

A. I think all the time that Mr. Norman Winston owned it. I do not recall, but I think so.

Q. Now, in each of these stations did Mr. Bulova own the majority interest?

A. Of course, he did not have anything in WAGA
77 and he did not own the control of WCOP, WNBC or WELI until—I don't know, he applied to this Commission I think about three years ago for permission.

Q. He had a substantial interest in them?

A. He had a substantial interest in them.

Q. Later acquired control of WELI and WNBC?

A. That is right.

Q. And WPEN?

A. Mr. Bulova owns that exclusively; no other stockholders.

Q. Does not Mr. Bulova own 3,000 out of the 5,000 shares of common in WCOP?

A. 3,000 out of the 5,000?

Q. Yes.

A. Yes, he owns the control.

Q. I thought you said he did not control WCOP.

A. No; I said he did. He did not originally, but he did later.

Q. Let us go back to the beginning of the negotiations with respect to WORL, Mr. Lafount.

A. Yes, sir.

Q. When did you have your first contact with the station?

A. I should think about 30 days before, as I can remember, I don't remember exactly, but I should think it was only about 30 days before March 25, or sometime
78 around the first of March or February of 1937, as I remember it.

Q. Do you recall that Mr. Jerry Slattery of WCOP had informed you about WORL?

A. I do not recall that, no. He could have done it, but I do not recall it.

Q. What is your recollection as to your first knowledge of WORL?

A. My recollection is that Mr. Crockwell telephoned me and asked me when I could see him.

Q. You don't know how Mr. Crockwell got your name as being possibly interested in it?

A. No. Possibly through Jerry Slattery, who was manager of WCOP.

Q. Mr. Eynon, I believe had known Mr. Slattery very well. Had he ever worked at WCOP?

A. Not that I know of.

Q. The licensee of WORL was the same as now, the Broadcasting Service Organization, Incorporated?

A. That is right.

Q. What class of stock was outstanding, or what classes of stock were outstanding at the time you first started the negotiations?

A. Well, I think that they had A and B stock. I know that they reported to me they held meetings rather recently, and I have a recollection of Mr. Crockwell saying
79 that he had purchased 600 shares of the preferred stock, A stock, but actually what classes there were was not known to me until I actually closed the deal to

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buy stock. I just had a difficult job to find out. However, they did agree that there should be in the new set-up $44,000 worth of preferred stock, it should be ahead of the common. Now, there was also talk of this stock being double that, and they asked me if I had any objections to reducing from $88 to $44, and I told them definitely it would have to be done that way, I would not consider $88, but I believe they never did issue stock based on $88, or a value of $88, I think it was issued on the basis only of $44. I think it was all done about that time.

Q. You do recall there were two classes of stock outstanding before you came into the corporation?

A. Yes.

Q. The A stock and B stock?

A. I do.

Q. Do you recall the respective rights of the two classes of stock?

A. I do now, yes. Now, I remember.

Q. The A stock was the voting stock?

A. No, sir, the A stock was preferred.

Q. Do you remember what dividend rights it carried?

A. $2.20 a share, I think, that would be paid annually.

Q. This was before the final closing, Mr. Lafount.

80 A. That I do not know; I do not recall.

Mr. Shuebruk: Mr. -Examiner, at this time I would like to offer as Commission's Exhibit No. 1 a copy of articles of amendment filed with the Commission by the licensee, showing the amendment to its charter in July of 1936. This amendment to the charter dealt with setting up two classes of stock, the A and B, and details their respective rights.

The Examiner: Any objection?

Mr. Fisher: No objection, your Honor.

The Examiner: It may be admitted as Commission's Exhibit No. 1.

(Commission's Exhibit No. 1 was received in evidence.)

Mr. Fisher: That was in 1936, though, was it not, Mr. Shuebruk?

Mr. Shuebruk: 1936, yes, sir.

By Mr. Shuebruk:

Q. I show you this exhibit, Commission's Exhibit No. 1, Mr. Lafount. I believe this shows that the A stock was entitled to $5 a share dividends per annum, cumulative, and that the Class A stock, in the event of liquidation or dissolution, was entitled to $100 a share.

A. Yes, sir.

Q. Together with accrued dividends.

A. Yes, sir.

Mr. Fisher: Where is that on here?

81 Mr. Shuebruk: On page 3.

The Examiner: The first full paragraph on page 3.

By Mr. Shuebruk:

Q. Who were the owners of the two classes of stock, Mr. Lafount, at the time you began your negotiations?

A. Well, I was not negotiating for preferred stock, and I really did not know. I do not recall at the moment who did own it. I have some recollection of Mr. Crockwell saying that he owned 600 shares of it, and that he paid $26,000 for it, but I do not recall who owned the others. I think at this minute that Mr. Eynon and Mr. Endlar, the two other stockholders, each owned a few shares of it.

Q. Do you recognize this book (indicating), Mr. Lafount?

A. Yes, sir.

Q. At the annual meeting of stockholders on January 20, 1937, as shown by the minutes of the licensee's minute book, it appears that the A stock was owned by George A. Crockwell, 400 shares.

A. That is right.

Q. James K. Phelan, 300 shares.

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A. That is right.

Q. William H. Eynon, 300 shares.

A. That is right.

Q. And the B stock, as appears from the same
82 minutes, was owned: George A. Crockwell, 200 shares; James K. Phelan, 150 shares, William H. Eynon, 149 shares; George L. White, 100 shares,

A. Yes, sir.

Q. Robert C. Nordblom, 500 shares.

A. That is correct, according to that book.

Q. Over how long a period did the negotiations extend?

A. My recollection is about 30 days. It may have been longer, but I do not recall.

Q. What were the various propositions involved in the discussions?

A. Particularly price.

Q. What was the asking price and for how many shares?

A. The very first deal that was presented was for 500 shares.

Q. To be sold by whom?

A. It was all with Mr. Crockwell. I do not know whom the shares actually belonged to, but my negotiations were all with Mr. Crockwell. As I recall it, Mr. Crockwell was offering 500 shares, and then he said he could only deliver 400 shares, and then it was a question of the price, and then a question of the condition of the corporation, the obligations of the corporation and who was going to pay for them, whether or not this money was going to
buy just the stock, or whether, in effect, it was going
83 to be a contribution on his part to the corporation in order to liquidate the obligations, and finally he agreed that out of the $48,000 he would pay all of the obligations of the corporation.

Q. You had no negotiations with Mr. Nordblom on it?

A. No, sir, I do not recall ever talking with Mr. Nordblom about the transaction until we met to close it. I

am not sure that I met him before. I think I met him at the closing.

Q. You initially talked about purchasing 500 shares of the common stock?

A. Initially, I think, Mr. Crockwell suggested that he could deliver 500 shares.

Q. He later was in a position to deliver the 500 shares, was he not?

A. Later he was in a position to deliver more, yes.

Q. Did you talk to Mr. Eynon?

A. No.

Q. Mr. Phelan?

A. No, sir.

Q. You met them before the transactions were through?

A. No, sir, only while we were closing in the lawyer's office.

Q. Was it your intention to purchase a majority interest, if possible, in the station?

A. It was not, no. I should have purchased it at a price, of course, if I had gotten the right price when
84 I started to negotiate, I should have purchased all of the stock, but later when I was told, about March 24 or 23, that an additional 300 shares was available, I immediately told Mr. Sanford Cohen, who was anxious to get in on any deal where we thought we were going to make some money out of a radio station, and he said he would be glad to go in with me to buy the stock, and that was done.

Q. When did you first apprise Mr. Bulova of the possibility of purchasing this station?

A. Oh, I think the moment I knew it, at the very moment. He may not have been in the city the day I heard about it, but certainly the very first opportunity I told Mr. Bulova.

Q. What was the general nature of your talks with Mr. Bulova?

A. Mr. Bulova said, "No, I have got three or four day-

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time stations now, I don't want another daytime station. If you can make it full time I might be interested. No, I am not interested." I said, "Supposing Sandy and I buy it?" "O.K., go ahead."

Q. You mean as soon as you heard that the station was for sale you asked Mr. Bulova if he was interested in buying it?

A. That is correct.

Q. He definitely turned thumbs down on it?

A. He did.

85 Q. Were you aware at that time that you would have to get the money from Mr. Bulova to finance the transaction?

A. Oh, yes.

Q. And you made arrangements at the time before the final deal was made?

A. Before it was made, I did, but I did not know whether I should go through with the deal at all or not. I did not know whether I should go and buy any stock.

Q. What were the essential elements of the transaction as finally set up for the purchase of the shares in the station?

A. May I ask you now what you mean? I want to give you the information that you want. The elements? I don't quite know what you mean.

Q. During the course of the negotiations you insisted upon certain things being done before the deal was finally consummated, is that right?

A. Yes, sir.

Q. And one of those things was that the purchase price should be used to pay the debts of the corporation.

A. That is right.

Q. So that you would take it over free from debt.

A. Yes.

Q. Do you recall other things that you insisted on being taken care of before the deal was put through?

86 A. Well, a guarantee on their part that all the debts would be paid, and if any showed up later, that

they would take care of them, and that I should be made president, and—I don't know. I think those are the high spots.

Q. What about the change in the preferences?

A. Oh, yes. The preferred stock was to be reduced from what I thought was $88,000, but I see now by the record that is $100,000, I am sorry; that was to be reduced to $44 a share or $44,000.

Q. $44 a share?

A. $44 a share.

Q. And Mr. Eynon, Mr. Phelan and Mr. Crockwell had employment contracts with the corporation?

A. Yes.

Q. At the time negotiations were going on?

A. I believe they did. I did not think about that from that day to this, but I think they did, and they were canceled.

Q. That was part of their arrangement?

A. That is right, yes, sir.

Q. I believe there was also some question about the lease at the Miles Standish Hotel where the station studio was.

A. That is right, there was.

Q. The lease was to be paid up for a year in advance?

A. Yes, sir.

87 Q. At the time the deal was put through.

A. That is correct.

Q. These were all elements in the transaction that you insisted on before the deal was put through?

A. That is correct, yes, sir.

Q. Did you at the time of the negotiations represent that this was an extension of Mr. Bulova's radio interests, that he had other stations and that he was the purchaser of the station?

A. No, sir.

Q. So far as the purchaser knew you were buying for yourself?

A. Definitely. I heard many times that Mr. Bulova

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owned it, and I heard many people say they were sure he did, but certainly I know he did not.

Q. Let me show you again, Mr. Lafount, the licensee's minute book of a special meeting of stockholders in Boston, Massachusetts on March 9, 1937.

A. Yes.

Q. There being present Messrs. George L. White, R. C. Nordblom, John Breen, George A. Crockwell, William H. Eynon and James K. Phelan.

A. Yes, sir.

Q. Being the owners of all of the stock of the company.

A. Yes, sir.

88 Q. At the time the deal was put through.

A. That is correct.

Q. These were all elements in the transaction that you insisted on before the deal was put through?

A. That is correct, yes, sir.

Q. Did you at the time of the negotiations represent that this was an extension of Mr. Bulova's radio interests, that he had other stations and that he was the purchaser of the station?

A. No, sir.

Q. (Illegible) purchaser knew you were buying for (Illegible) I heard many times that Mr. Bulova owned it, I heard many people say they were sure he did, but certainly I know he did not.

Q. Let me show you again, Mr. Lafount, the licensee's minute book of a special meeting of stockholders in Boston, Massachusetts on March 9, 1937.

A. Yes.

Q. There being present Messrs. George L. White, R. C. Nordblom, John Breen, George A. Crockwell, William H. Eynon and James K. Phelan.

A. Yes, sir.

Q. Being the owners of all of the stock of the company.

A. Yes, sir.

89 Q. Do you recall who the directors were of the corporation before you came in?

A. No, sir, I do not.

Q. We will come to that later. Let me direct your attention to this paragraph in the minutes, Mr. Lafount:

"The business of the company was discussed at length by the stockholders, particularly with reference to the financial needs of the company in order to continue the operation of its radio station. It was the consensus of opinion that either a sale of the corporation or a sale of its stock by the stockholders in order to provide new funds was essential to the corporation. Therefore, on motion duly made and seconded, it was unanimously voted to authorize the president, Robert C. Nordblom, and the treasurer, George A. Crockwell, to negotiate with such persons, firms or corporations as they may select, with a view of selling the assets of the corporation."

Was there any proposal made by the then owners of the station that the assets of the corporation be transferred rather than the sale of the stock?

A. No, sir.

Q. No such proposal was made?

A. Not that I recall.

Q. From the outset it was a question of purchasing so many shares, the number being not decided on until some time after the negotiations had started?

90 A. Yes. The only thing I was interested in was a going institution, not just a transmitter and broken down piano.

Q. When the final deal was consummated, or before it was consummated but the agreement had been made, what were the shares that were to be sold?

A. The final deal?

Q. Yes.

A. On March 25, 1937, I purchased 400 shares of Class B.

Q. Voting stock?

A. Voting stock. I purchased it for $48,000.

Q. That was the only stock that was contemplated to be transferred at that time?

A. To me. I was then also negotiating for 300 shares

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from Mr. Cohen, which was in a separate contract entirely, negotiated separately and for Mr. Cohen for 300 shares, for which he was to pay $4,500.

Q. There was a contract signed, was there not, sometime before the final closing took place on, I believe, March 25, 1937, prior to that time there was a contract signed under which you agreed to purchase so many shares for so much more and various other elements in the transaction which you insisted be taken care of were provided for?

A. Now, there was another agreement, which I
91 think expired before the 25th but I am not quite sure whether I was party to that agreement or not, but I recall having seen one.

Q. Was any A stock involved?

A. No, sir.

Q. In this transaction at this time?

A. Only that its value should be reduced.

Q. So that the essential elements, so far as the transaction is concerned, prior to the closing on March 25 were the purchase of 400 shares of B stock by you for $48,000?

A. That is right.

Q. The resignations of the officers and directors then existing in the corporation; the changes in the preferences; the cancellation of the employment contract by Crockwell, Eynon and Phelan?

A. Not the resignation of all the officers. I think Mr. Nordblom remained, and I think probably Mr. Davison was an officer.

Q. Mr. Davison remained on as clerk, you are right.

A. I think he remained.

Q. Mr. Crockwell, Mr. Eynon and Mr. Phelan, the other directors, went out?

A. Yes.

Q. We will come to that in a minute. I will show you the minute book.

92 A. Thank you.

Q. Did you know from whom you were buying the 400 shares of B stock?

A. I knew I was buying it from Mr. Crockwell, but I did not know whose stock it was during the time I was negotiating, but I think the agreement you refer to, that may have been signed prior to the one dated March 25, and I think that may have explained the stockholders and who was going to sell, but I am not too sure about that.

Mr. Shuebruk: Mr. Examiner, I offer as Commission's Exhibit No. 2 a copy of a contract dated March 16, 1937, between George A. Crockwell, Robert C. Nordblom, James K. Phelan and William H. Eynon. Mr. Fisher has, I believe, agreed that this may become a part of the record.

The Examiner: Any objection?

Mr. Fisher: I have no objection to the exhibit. Are you going to put in the contract that Mr. Lafount made for the purchase of the stock?

Mr. Shuebruk: Yes.

Mr. Fisher: This is not the contract that Mr. Lafount had anything to do with, as I understand. He is not a party to this in any way.

Mr. Shuebruk: That is right.

The Examiner: I understand it is just historical concerning the stock, something that happened prior
93 to his acquisition.

Mr. Fisher: That is right.

The Examiner: Any objection?

Mr. Fisher: No objection.

The Examiner: It may be admitted.

(Commission's Exhibit No. 2 was received in evidence.)

By Mr. Shuebruk:

Q. If you will look at paragraph 1 of Commission's Exhibit No. 2, Mr. Lafount, it appears that Mr. Eynon was to transfer 150 shares of B stock which stood in his name and 300 shares of A stock to Mr. Crockwell.

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A. Yes.

Q. And that he was to cancel his employment contract and to resign as a director and vice president of the corporation.

A. Yes, sir.

Q. In consideration of the payment to him out of the proceeds of the sale to Mr. Lafount of the sum of $2500.

Paragraph 2 shows that Mr. Phelan made the same agreement to transfer his 150 shares of B and 300 shares of A to Mr. Crockwell, cancel his employment contract, resign as director and vice president, and to receive the sum of $2500.

A. Yes, sir.

Q. You will note, Mr. Lafount, the second "Whereas" clause in the contract.

94 A. Yes, sir.

Q. It says: "Whereas, said George A. Crockwell and Robert C. Nordblom are about to enter into a contract with Harold A. Lafount for the sale of 700 shares of said Class B stock for the sum of $52,500 and George A. Crockwell and Robert C. Nordblom agree to discharge from this amount all of the debts of Broadcasting Service Organization, Inc. except certain lease and other contract obligations as specified in the agreement with Lafount."

A. Yes.

Q. Do you recall the agreement to which that contract refers, the agreement to which you stated you were a party?

A. Yes, sir.

Mr. Fisher: That was afterwards, yes.

The Witness: That was after this.

By Mr. Shuebruk:

Q. Do you remember what the date of that contract was that this was referring to?

Mr. Fisher: It was not in existence then.

The Witness: I believe there was no contract then at all. As far as I know and can recall, I think it was oral.

By Mr. Shuebruk:

Q. Do you recall what agreement this does refer to? What agreement would this refer to to which you were a party?

A. Only an oral agreement.

95 Mr. Fisher: Mr. Shuebruk, let us understand this. That is why I wanted the other contract in first. This, you understand, becomes void on March 23, under paragraph 5.

By Mr. Shuebruk:

Q. This is dated what date, Mr. Lafount?

A. I am sorry, I do not know.

Mr. Fisher: Right at the top, the 16th of March.

By Mr. Shuebruk:

Q. At the top of the page, March 16, 1937.

A. March 16, yes, sir.

The Examiner: It seems to have been executed on March 23, does it not?

The Witness: No, sir.

Mr. Fisher: 23 is the expiration date.

The Examiner: Oh, yes.

Mr. Shuebruk: The date is on the top of the first sheet.

The Examiner: The date is March 16.

By Mr. Shuebruk:

Q. So this agreement to which this contract makes reference, in which you are stated to be a party, Mr. Lafount, referred to what agreement?

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A. That I do not know. Of course, I had nothing to do with this agreement.

Q. What agreement—written agreement did you make at this time in connection with the purchase of stock?

96 A. At this time I recall of none.

Q. The only contract you made was when?

A. As nearly as I can remember there was only one, and that was on March 25.

Q. At the time of the closing?

A. Yes, sir.

Q. You testified, I believe, on direct that your first negotiations with Mr. Crockwell broke down and you went back to New York about the 20th, I think you said.

A. I am not sure as to the date, but it was, I think probably even closer to the 25th than that, between the 20th and 25th.

Q. Do you recall the reason for the break-down of the negotiations?

A. Yes, I think our agreement was just impossible. The bills that he had accumulated were so much in excess of what he figured that he told me he would have to have a lot more money.

Q. How much was he asking?

A. As I recall it, it was $8,000 or $10,000 more.

Q. A total of what?

A. $58,000 or $59,000—no, I think it came up as high as $62,000.

Q. Are you sure you are not confusing your dates, Mr. Lafount, as to the break down of negotiations with

97 those you may have had at the end of 1936?

A. 1936? I don't recall any in 1936.

Q. In other words, the negotiations for the purchase of the station, according to your recollection, were over a very short period of time, about a month?

A. As I remember it, yes.

Q. What were the circumstances under which the negotiations were resumed?

A. You mean after this?

Q. No, excuse me. After the break down.

A. A telephone conversation. Mr. Crockwell asked me if I would please return.

Q. That would be about when?

A. I think it was just a day, possibly two days before, something like that. It was around the 23rd, the 20th, 22nd, 23rd, it was right in there.

Q. So that prior to that time you had entered into no contract with Mr. Crockwell or Mr. Nordblom covering the purchase of any stock?

A. I recall not any of them, no, sir. I believe not.

Q. That was because the price was too high?

A. Yes, sir.

Mr. Shuebruk: I ask to have this marked Commission's Exhibit No. 3 for Identification.

(Document referred to was marked Commission's
98 Exhibit No. 3 for Identification.)

By Mr. Shuebruk:

Q. I show you Commission's Exhibit No. 3, Mr. Lafount.

A. Yes, sir.

Q. Do you recognize that contract?

A. No, I do not.

Q. What date is it?

A. It bears the date of the 16th day of March, 1937.

Q. And it is between what parties?

A. George A. Crockwell and Robert C. Nordblom.

Q. And?

A. Myself.

Q. Will you look at that signature? Is that your signature?

A. Yes, sir, I think it is.

Q. Will you read it, Mr. Lafount, so I can ask you a few questions concerning it?

A. Yes, sir (perusing document).

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Q. You have read it through, Mr. Lafount?

A. I have, yes, sir.

Q. Do you recall in paragraph 1 of that agreement between you, Mr. Crockwell and Mr. Nordblom of March 16, 1937 it is recited that Mr. Crockwell and Mr. Nordblom are the owners of more than two-thirds of the outstanding voting stock of the corporation and they agree to
99 alter its capital so that the Class A stock will be entitled to dividends at the rate of $2.20 per share?

A. That is right.

Q. That compares with the rate of $5.00 per share existing at that time?

A. That is correct.

Q. And it was further agreed that the dividends would be cumulative only if earned.

A. Yes, sir.

Q. And that the dividends were cumulative apart from earnings.

A. That is right.

Q. And it was further agreed in this March 16 contract between you, Mr. Crockwell and Mr. Nordblom that a sinking fund should be set up for the retirement of the A stock.

A. That is right.

Q. In paragraph 2 of that agreement it was provided further that the debts of the corporation existing on March 25, 1937, excepting certain contracts with ASCAP and certain other contracts there enumerated should be paid off?

A. That is right.

Q. Now, this calls for what, Mr. Lafount, this contract? For the sale of what?

A. 400 shares of Class B stock.

Q. For how much money?

100 A. $48,000.

Q. From whom to whom?

A. From me to Mr. Crockwell and Mr. Nordblom.

Q. You mean to you? It was to be sold to you?

A. Sell to me, to be paid by me to them.

Q. Do you know why the liquidating value of the preferred stock was put at $44 a share?

A. I know that I insisted upon it being reduced. My recollection was, as I testified heard all kinds of remarks, as I recall, $86, $94—$88, rather, $96 and $88, and then I definitely insisted that that be reduced to $44.

Q. Why did you pick on the figure of $44?

A. Because at that time it was just half the amount that I thought the amount of the stock was.

Q. That made a total of $44,000 liquidating value of the preferred A stock?

A. That is correct, yes, sir.

Q. You were the one that set the price at $44 a share?

A. As I recall it. I know I would not agree to a greater amount.

Q. Do you happen to recall what the claim of Mrs. Whitwell was against Mr. Crockwell that she later asserted? A. Did I then know?

Q. No. Do you know what the amount of the
101 claim was that Mrs. Whitwell asserted against Mr. Crockwell?

A. I did not know, no. I heard that it was for all of the stock, and I heard that it was for the preferred stock, and I heard that it was for loans and all sorts of claims, but I do not know. I have seen different claims filed by attorneys for her.

Q. You never heard the figure of $44,000 as being the amount which Mrs. Whitwell allegedly loaned Mr. Crockwell and for which he was indebted to her?

A. I heard she claimed she owned the preferred stock. I did not know the exact amount of her claim. I thought her claim was based on the value of the preferred stock.

Q. Commission's Exhibit No. 2, which I showed you a few minutes ago, and Commission's Exhibit No. 3, about

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which we have just been talking, were both dated March 16, 1937.

A. They were, yes, sir.

Q. Were they not part of the same transaction, entered into as part of the same arrangement?

A. They were substantially the same.

Q. They dealt with the same subject matter?

A. They dealt with the same subject matter.

Q. In fact, the contract to which you were a party, Commission's Exhibit No. 3, was dependent upon the execution of the contract between Messrs. Eynon, Phelan, Crockwell and Nordblom on the same date?

102 A. That I do not know. I should assume it was.

Q. Did not you insist that before you would go through with the deal Eynon and Phelan would have to resign their positions?

A. That is right.

Q. And give up their employment contract?

A. That is a fact.

Q. As a matter of fact, Crockwell at that time owned but 200 shares of B stock before he bought the holdings of Eynon and Phelan?

A. That is correct, yes.

Q. After which he owned the total of 500 shares, having but 150 each from Eynon and Phelan?

A. That is correct.

Q. So that the agreement between Eynon and Phelan, Crockwell and Nordblom, was a condition precedent to the carrying out of the agreement to which you were a party?

A. Yes, sir, apparently it was.

The Examiner: Do you wish to offer Exhibit No. 3 in evidence?

Mr. Shuebruk: I do, yes.

The Examiner: Any objection?

Mr. Fisher: No objection.

The Examiner: It may be admitted.

(Commission's Exhibit No. 3 was received in evi-
103 dence.)

By Mr. Shuebruk:

Q. You will note, Mr. Lafount, that Commission's Exhibit No. 2, the agreement between Mr. Crockwell, Nordblom, Phelan and Eynon, recites that, "Whereas, said George A. Crockwell and Robert C. Nordblom are about to enter into a contract with Harold A. Lafount for the sale of 700 shares of said Class B stock for the sum of $52,500, and George A. Crockwell and Robert C. Nordblom agree to discharge from this amount all of the debts of Broadcasting Service Organization, Inc. except certain lease and other contract obligations as specified in the agreement with Lafount."

A. That is correct.

Q. Whereas, the agreement to which you were a party on the same day recites, or provides for the sale to you by Crockwell and Nordblom of 400 shares for a total of $48,000.

A. That is right.

Q. What is the reason for that difference?

A. Well, I could reach a conclusion or give you an opinion, but I was not a party to this agreement where they recite 700 shares. I assume it was because I was negotiating with them in behalf of Mr. Cohen for the purchase of another 300 shares.

Q. So that the proposal to sell the total of 700 shares was under consideration at least as early as March 16?

A. Evidently.

104 Q. And did not first arise at some later date, say at the time of the closing on March 25?

A. Well, there has been very little said about it up until the 25th, very little.

Q. Well, obviously the terms had been under discussion, about the sale of 700 shares.

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A. That is correct.

Q. And this would indicate that it was in their minds and that the purchase price for them would be $52,500.

A. Yes, sir.

Q. Will you look again at Commission's Exhibit No. 3? Perhaps you can see better on the duplicate original of the agreement, Commission's Exhibit No. 3; you will note in paragraph 2, the third and fourth lines, the price to be paid for the stock seems to have been erased, does it not, and a new figure of $48,000 inserted?

A. It seems to have been, yes, sir.

Mr. Fisher: You mean in paragraph 2?

Mr. Shuebruk: Yes, the third line in numbered paragraph 2.

Mr. Fisher: Yes.

By Mr. Shuebruk:

Q. You do not know what might have occasioned that change?

A. No, I do not.

105 Q. As the result of having your recollection refreshed, Mr. Lafount, by this contract of March 16, 1937, Commission's Exhibit No. 3, do you still have the same recollection that the negotiations broke down between, say, the 15th and 24th or 25th?

A. I am positive that the did, yes, sir. I am positive because I recall too well sitting up all night on the train. I could not get a lower berth.

Q. What time was this?

A. Midnight.

Q. I mean what day?

A. I cannot remember. It was a day or two before the 25th.

Q. On your return to Washington?

A. On my return to New York. During the day we just could not get anywhere. This agreement I do not recall, which apparently was written, was something that Mr.

Crockwell said which I could not possibly comply with, and they wanted more money.

Q. Who represented you in these negotiations?

A. In Boston?

Q. Yes, in Boston.

A. Well, after the negotiations, not during the negotiations, but at the conclusion, Mr. Davison. Before that time, I am sorry, I did employ a lawyer there, I have for-
106 gotten his name and all about it, but I know there was someone else employed who had been doing some work up there for us. Mr. Davison only came into the picture, as did Mr. Fisher, when we were closing negotiations, closing the deal.

Q. You were consulting rather frequently with Mr. Davison during the course of these negotiations?

A. I do not recall that, but I may have seen him. As a matter of fact, you see he was their attorney, Mr. Nordblom's attorney, and is yet.

Q. Do you recall having a conference with Mr. Davison on March 17?

A. No, I do not.

Q. If Mr. Davison's diary should reflect that he had a conference with you at that time, would you be inclined to say that was correct?

A. I should think that would be likely to be correct.

Q. When did you say Mr. Fisher came to Boston?

A. I think it was on the 25th.

Q. He was not there prior to that?

A. No, sir.

Q. Do you recall who drafted these contracts, Commission's Exhibits 2 and 3?

A. No, I do not. Of course, this I knew nothing about, the one that is marked Commission's Exhibit No. 2, I did not know that because that is their agreement, and
107 this one I certainly do not recall, Exhibit 3.

Q. I think the original of this Exhibit 3 shows in whose office the contract was drafted.

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A. Yes.

Q. Mr. Davison's office.

A. Apparently it was prepared there by them.

Q. The transaction that was finally consummated was done pursuant to these agreements, was it not?

A. Yes, sir, substantially.

Q. So that if there was a break down of negotiations after the execution of these contracts, they were reinstated on their original footing?

A. Oh, yes, they were.

Q. And the various things recited that should be taken care of by the sellers with respect to the stock preferences, resignations, payment of debts, were all covered at the closing and carried through in fact?

A. Yes, sir.

Q. The contract identified as Commission's Exhibit No. 3 covers only the purchase by you of 400 shares for $48,000?

A. Yes, sir.

Q. Will you tell me about the discussions concerning the additional 300 shares?

A. With Mr. Crockwell?

Q. With Mr. Crockwell or Mr. Nordblom, or who-
108 ever it was.

A. All my negotiations were with Mr. Crockwell.

Q. Well, Mr. Nordblom was a party to this Commission's Exhibit No. 3, was he not?

A. That is correct.

Q. And was there at the same time that you were there signing it?

A. Yes, sir.

Q. What took place concerning the additional 300 shares?

A. At the time that we were closing?

Q. Well, before that. There must have been some discussion, must there not, prior to that time as indicated by Commission's Exhibit No. 2, that there were discussions looking towards the transfer of the total of 700 shares of B stock?

A. Yes, sir. That 300 shares was to be sold by Mr. Nordblom for $4500, and I think the contract was made on the 25th. I was not agreeing to buy it. A contract was entered into and I was negotiating for Mr. Cohen.

Q. Were these two transactions separate and distinct?

A. Oh, definitely.

Q. In other words, you were paying Mr. Crockwell $120 a share for his 400 shares of B stock and Mr. Nordblom was being paid $15 a share for his 300 shares of B stock?

A. Well, of course, out of the money I was paying
109 all of the obligations of the corporation were to be paid.

Q. The obligations were how much?

A. Some $38,000, as I remember. It was a large amount. I explained that to Mr. Cohen and Mr. Cohen agreed to pay one-half of that, to return it to me.

Q. Which left a balance of $10,000, then, for the 400 shares of B stock that you were purchasing from Mr. Crockwell, the debts amounting to $38,000, I think you testified.

A. Well, as I recall them, yes, sir. It would be about $10,000.

Q. There still would be considerable discrepancy, would there not, between the amount Mr. Crockwell was receiving for his 400 shares and the amount Mr. Nordblom was to receive for his 300 shares?

A. I think Mr. Nordblom participated in the first, in the stock that I purchased.

Q. You are quite right. It works out, I believe, Mr. Lafount, that Mr. Nordblom would be getting $7,000 total for 400 shares and Mr. Crockwell would be getting for his 300 shares $7,500. As a matter of fact, they had arranged between themselves, had they not, as to how they would split the $52,500?

A. The $52,500?

Q. Yes.

110 A. That I am not sure about.

Q. Will you look at Commission's Exhibit No. 2 again, Mr. Lafount, paragraph 4?

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A. The paragraph numbered 4?

Q. The paragraph numbered 4. It provides that the proceeds from the sale of the stock, after the payment of the debts of the corporation and payment of $2500 each to Mr. Eynon and Mr. Phelan, would be divided 37½ per cent to Mr. Nordblom and 62½ per cent to Mr. Crockwell.

A. Providing that if the debts of the Broadcasting Service Organization, Inc., including the cost, and so on, that was provided there. Of course, that is an agreement that I did not have anything to do with. I do not know.

Q. That indicates, does it not, Mr. Lafount, that the transfer was all one transaction?

A. No, not to me. It was two deals made at the same time.

Q. Two deals made at the same time covering one for 400 shares and one for 300 shares, but the prices involved being related, as indicated by Commission's Exhibit No. 2?

A. Commission's Exhibit No. 2 is something that is a contract made between these parties themselves. If you will pardon me, Mr. Fisher was very anxious that you know that I was not a lawyer. Maybe I am entirely out of place here in my analysis of this contract, but I had no part
111 in it in any way, shape or form. They may have construed it as one deal, they may have divided it. Some stockholder may have expected less for his stock than another one, depending on how much money they wanted. I had nothing to do with it.

Q. As a matter of fact, there was being a transfer made for 700 shares, was there not?

A. There was to be a transfer made of 700 shares, 300 to Mr. Cohen, or he and his brother, and 400 to me, but there were definitely two separate and distinct transactions for two or three different people.

Mr. Shuebruk: I ask to have this marked Commission's Exhibit No. 4 for Identification.

(Document referred to was marked Commission's Exhibit No. 4 for Identification.)

By Mr. Shuebruk:

Q. Let me show you the minute book of the corporation again, Mr. Lafount, the special meeting of the stockholders held on March 19, 1937.

A. Yes, sir.

Mr. Fisher: This is not what you read into the record before, or some of it, Mr. Shuebruk?

Mr. Shuebruk: No, it is not.

By Mr. Shuebruk:

Q. (Continuing) At which were present Messrs. Crockwell, Phelan, Eynon, White and Nordblom, being the
112 holders of all the A and B stock at that time of the licensee, and at that meeting, reading from the minutes, this action was taken:

"On motion duly made and seconded it was (Mr. White not voting) voted to repeal in toto the by-laws of the corporation as they now stand and to adopt the following by-laws for the corporation."

Then follows, does it not, a new set of by-laws which were adopted at that meeting, ending with Article 12?

A. Yes, sir.

Q. Also the following action was taken at that meeting:

"On motion duly made and seconded it was voted by vote of all the shares of Class A and 999 shares of Class B outstanding to amend the rights, preferences, privileges and restrictions of the Class A stock so that they shall be as follows:"

Then follows the revision of the preference provisions of the A and B stock.

That is right, is it not?

A. Yes.

Mr. Shuebruk: I would like to offer as Commission's Exhibit No. 4 an excerpt from the minute book of that meeting, of the minutes of that meeting on

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March 19, 1937, showing those changes in preferences.

Mr. Fisher: No objection.

113 The Examiner: It may be admitted.

(Commission's Exhibit No. 4 was received in evidence.)

The Examiner: We will recess until two o'clock.

(Whereupon, at 12:25 P. M., the hearing was recessed until 2:00 o'clock P. M. of the same day.)

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114 AFTERNOON SESSION

2:00 P. M.

The Examiner: All right, gentlemen. Are you ready to proceed?

Mr. Shuebruk: Ready.

The Examiner: You may continue cross examination, Mr. Shuebruk.

Whereupon,

HAROLD A. LAFOUNT resumed the stand, and having been previously duly sworn, testified further as follows:

Cross examination (continued) by Mr. Shuebruk:

Q. The last thing you put into the record, Mr. Lafount, I think, was the minutes of the stockholders' meeting of the licensee on March 19, 1937, at which time they changed the preferences of the "A" stock to meet your conditions to the transaction?

A. Yes.

Q. As a result of the agreements on March 16, Mr. Crockwell and Mr. Nordblom were in a position to meet your other requirements, were they not, and Mr. Eynon and Mr. Phelan had agreed to resign from office and cancel their employment contracts?

A. Yes, sir.

115 Q. And sell their stock to Crockwell so that Crockwell would have enough stock to carry out the sale?

A. I think that is correct.

Q. Then on March 25 there was the closing, was there not?

A. Another agreement in the closing, yes, sir,—the escrow agreement, I think it is called.

Q. We will come to that in just a second. Where was the closing?

A. At Boston, in Mr. Davison's office.

Q. And he was there as attorney for the licensee?

A. Mr. Davison?

Q. Yes.

A. Yes.

Q. And who was present besides yourself?

A. Mr. Fisher.

Q. Mr. Fisher as your attorney, and Mr. Crockwell?

A. Mr. Crockwell.

Q. Mr. Nordblom?

A. I think so.

Q. Mr. Eynon?

A. I think so.

Q. Mr. Phelan?

A. I think they were all there.

Q. And I believe there was an attorney there
116 representing the Newton Trust Company, one of the creditors, who was to be paid off at that time?

A. I am not sure. It could have been.

Mr. Shuebruk: I will have this document marked for identification.

(The document referred to was marked Commission's Exhibit No. 5 for Identification.)

By Mr. Shuebruk:

Q. I show you, Mr. Lafount, Commission's Exhibit 5 for Identification.

BLEED THROUGH- POOR COPY

A. Yes, sir.

Q. Purported to be made between Mr. Crockwell, Mr. Nordblom and yourself.

A. Yes, sir.

Q. On the one hand, as escrow agent, and Mr. Davison on the other?

A. Yes.

Q. You recognize that as the so-called escrow contract?

A. Yes, sir.

Q. And that was signed at the time of the closing in Mr. Davison's office on March 25?

A. I think it was signed at that time. I am not quite sure.

Q. It was dated that day?

A. I am not quite sure the closing was that day,
117 but I think it is, and as nearly as I can remember and all the documents would indicate, it was.

Q. That provides that there was to be paid the sum of $48,000 to Mr. Davison as escrow agent, and he was to pay off the debts of the corporation out of that sum?

A. That is correct, yes.

Q. It also provides, if you look at page 2, does it not, that the balance, after the payment of debts, should be distributed as follows: 62½ percent to Crockwell, and 37½ to Nordblom, end of the first paragraph on page 2.

A. Oh yes, yes, sir. That is correct.

Q. Those are the same proportions as the agreement identified as Commission's Exhibit 2, entered into on March 16, 1937, between Crockwell, Nordblom, Eynon, and Phelan, is it not?

A. Yes, sir, I think it is.

Q. Now, at the closing, you furnished Mr. Davison with some money?

A. That is right.

Q. How much was that?

A. It was $52,500.

Q. $52,500?

A. Yes, that is right.

Q. And I think you testified it was a cashier's
118 check?

A. I testified that I thought so, and I still do, and I am pretty reasonably safe in saying that it was a cashier's check because I think I would have been afraid to have gone up there with anything else.

Q. You recall the bank?

A. No, I do not. I had nothing to do with it.

Q. How did you obtain that?

A. From Mr. Bulova's office, his secretary, as I recall it, got it for me.

Q. Was it payable to you or Mr. Davison?

A. I am sorry, I don't know that. I think it was made payable to me.

Q. And then, after closing, you endorsed it?

A. I think so, yes.

Q. You will note on page 2 of the March 25 escrow contract that it recites, at the bottom of the page, that the resignation of the officers and directors have been placed in escrow.

A. That is right.

Q. And that new officers and directors have been elected in accordance with the by-laws.

A. That is right.

Mr. Shuebruk: I offer Commission's Exhibit 5 in evidence.

The Examiner: Any objection?

Mr. Fisher: No objection.

119 The Examiner: Admitted.

(Commission's Exhibit No. 5 was received in evidence.)

By Mr. Shuebruk:

Q. Now, the $52,500—by the way, that was in one check?

A. I think it was.

BLEED THROUGH- POOR COPY

Q. That amount was for the purchase of 700 shares of the "B" stock?

A. 400 of mine, yes, and 300 from Mr. Cohen; that is correct.

Q. Although the escrow contract itself provides only for the transfer of 400 shares of the "B" to you?

A. That is correct.

Q. But there was an additional 300 which was to be transferred at the same time?

A. Yes, sir.

Q. And Mr. Sanford Cohen was buying the additional 300?

A. Yes, he and/or his brother—not or, but he and his brother.

Q. His brother is George Cohen?

A. That is right.

Q. And they are law partners and were at that time?

A. Well, I really don't know. I assume so. They practice in the same office. That word "partnership" I
120 use, sometimes, rather loosely and I don't mean partners, but I don't know whether they have a partnership arrangement or how it is working.

Q. Well, they are associates?

A. They are associated, at least, yes, sir.

Q. How did it come about that Sanford Cohen and/or his brother, George, were to buy the additional 300?

A. Well, when I told them weeks before that I was negotiating for a station or an interest in a station myself, they said, "Well, if it looks like a good deal, we would like to go with you."

Since they were associated with me, I think my office was in their office, connected, on the same switchboard, floor and everything, while I was in New York our office there had a room there.

Q. They were your attorneys at the same time?

A. They were my attorneys, Mr. Bulova's attorneys, and we were just—may I put it in these words: By hell, we

thought we would like to get in on the deal ourselves and make a little money, if it was possible.

Q. Had you had other business interests with the Cohens prior to this time?

A. I?

Q. Yes, sir.

A. No, sir.

121 Q. This is your first business venture together?

A. Yes, first and only. They ignored me when they got into something good.

Q. Now, you say that the funds were made available initially by Mr. Bulova?

A. That is correct.

Q Had you borrowed money from them before?

A. Not as a loan. We just had a running account, and I would ask for so much money to do this or that or the other with. It was advanced, I would spend it, probably spend more, maybe several thousand dollars.

Q. In the conduct of his affairs, you mean?

A. Yes, sir; all his affairs.

Q. And the running account, in other words—

A. Had nothing to do with this station.

Q. (continuing)—was to provide you with funds as the manager of his radio interests?

A. That is correct.

Q. Well, how was this particular transaction handled with Mr. Bulova for the advance of $52,500?

A. Just as a loan.

Q. Did you give him a note?

A. No, sir. Oh, no. I think he owed me, as I testified this morning, about $12,000 or $12,400 that I advanced him over a period of maybe two or three years—two years.

122 Q. This was in the course of conducting his affairs that you would advance $12,000 or so?

A. That is right.

Q. And that meant after the loan you owed him a balance of $40,000?

BLEED THROUGH— POOR COPY

A. That is right.

Q. Do you keep any ledger or books of account?

A. No, sir.

Q. Do you have any records of this running account that you and Mr. Bulova have?

A. No, sir.

Q. Do you know whether he has?

A. No, sir, I don't.

Q. How did you keep track of such frequent exchanges and advances of money?

A. It was done on memorandums, but most of it was done by auditors who kept track of us pretty well.

Q. By the auditors, you say?

A. That is right.

Q. Well, there are some books of account, then, either yours or Mr. Bulova's, which reflect these advances and repayments?

A. Well, they will reflect the amounts in a way, but not just where they came from. For instance, I may be having a lot of work done on one of Mr. Bulova's stations,
123 and I advance some money and pay up all the bills. I submit those bills to the auditor and they are all approved. The record of that corporation shows that the amount of money is due to either me or Mr. Bulova.

Q. Well, there are some records, either yours or Mr. Bulova's, which indicate—which will show that at any given time you are indebted to him for so much, or he is indebted to you for so much?

A. A combination of the records, I think, would.

Q. Do you have any such records?

A. No, sir.

Q. Well, who keeps those records?

A. The records are all kept at the different stations or companies in which we are interested.

Q. Well, you mean you had several running accounts of Mr. Bulova—not just one, but perhaps half a dozen, one for each station?

A. No, sir; it was all one, all one running account, but may have been applied to one station or another. It could have been applied to any one of them. The money was taken from one company to another, wherever they needed the money.

You see, it was done for this reason. Mr. Bulova had—has—did have and now has a factory in Switzerland. At that time he was abroad—well, I should say perhaps
124 two or three months out of each year, and that was not all in one trip. He made three or four trips a year.

Well, it was impossible for me to go and get money while he was away. Sometimes—I said it was impossible, and that is not quite correct. Sometimes I would have to go to Mr. Cohen and ask him. He had power of attorney and I would get $5,000 or $10,000, or $50,000. It made no difference and that was all used for Mr. Bulova's interests in one thing or another.

Q. Those would be amounts, advances, loans, and so forth, which would be reflected on the various licensees' books and accounts; is not that right, back and forth from one licensee to another?

A. That is right.

Q. Now, this particular transaction was handled in what way, this borrowing from Mr. Bulova?

A. Just a loan by Mr. Bulova. He simply said, "Yes, go ahead, get the money."

Q. A loan to whom, or what?

A. It was advanced by him, and no evidence of the indebtedness was indicated in any way anywhere. He simply said, "Go ahead and get a certified check for whatever amount you need now, and if you need a little later, I will be glad to have you use my money until you don't need any," and, as I say, he did not know just how much
125 he owed me—whether it was $5,000 or any.

Q. How do you find that out at any particular time, just how much he owes you, or you owe him?

A. Ordinarily, by the checks I pay out.

BLEED THROUGH- POOR COPY

Q. How did your credit get Mr. Bulova for $12,000 or so?

A. I don't recall this minute, but amounts paid for—oh, equipment or real estate.

Q. Which you had paid out of your personal funds?

A. That is correct; yes, sir.

Q. How do you recall the amount at this time?

A. Because I looked it up purposely that I might know for this hearing.

Q. Where did you look for it?

A. The checks that I had paid and asked the accountants to check for me and with me.

Q. These were back in 1936 and 1937?

A. That is right, 1935, perhaps.

Q. When did you look at those checks?

A. I did not look at the checks because I haven't got my own checks for that period of time, so that all I could go by was the memorandums with Mr. Zinnerman, our auditor —the ones he had made, and also a few notes that I had made.

Q. Mr. Zinnerman's books were—what kind of books were they that he looked at?

126 A. I am sorry; I think he looked at all the corporation's books and checked up on moneys advanced, and determined approximately the amount,—all of them. I think he looked at all of the five or six or seven corporations.

Q. Suppose at any given time you wanted to find out how much you owed Mr. Bulova or how much Mr. Bulova owed you, what would you do?

A. At this time, you mean?

Q. Yes, at any time.

A. At this time, why, I should go to my check book.

Q. To your stubs?

A. Stubs, or the checks.

Q. How would you know how much he had repaid you? How would you know what the income from him was?

A. Mr. Bulova never repaid me directly. I have gotten

few checks from him directly, so that I should know where the money came from, one of the other corporations.

Q. Well, you would know by looking at your check stubs how much you advanced to Mr. Bulova. How would you know how much he had repaid you? Where did you keep that record?

A. Of the receipts?

Q. Yes.

A. Well, the records of the corporation would show that. If I wanted to check up at any particular time, I would go and find out if that had been returned.

127 Q. You would go to the books of WCOP or WNEW and see how much had been paid to you?

A. That is right.

Q. There was no single record kept of the running account between you and Mr. Bulova?

A. No, sir. It was so simple that there was no occasion for it.

Q. You testified, I think, that you had this running account over a period of years, didn't you?

A. That is right.

Q. You think it is a simple method to keep track of the balance at any particular time?

A. I haven't any trouble.

Q. How far back do your check books go? Do you have check book stubs?

A. Only to and including 1941.

Q. And what about canceled checks?

A. Canceled checks, the same thing—only for 1941. I asked how many years I had to keep them when they were campaigning for paper and I cleaned out my desk, everything, every piece of paper I could find, and I have, unfortunately, nothing except for the past three years, and I have my checks for that period.

Q. When did you make the repayments to Mr. Bulova?

128 A. In the first place, there was an amount which Mr. Cohen, or either of them—both of them—would owe me, I think, something like seven or eight or

BLEED THROUGH- POOR COPY

nine thousand dollars. I should think they would pay Mr. Bulova directly. His office is next to theirs. They agreed to pay that, and I am sure, did, because he has said so. I paid him. First of all, I advanced some money, about $7,500, to the Sanfont Realty Company.

Q. What company is that?

A. Just a real estate corporation, and owns the real estate upon which WCOP transmitters and towers are built.

Q. Who owns that corporation?

A. Mr. Bulova, and, as a matter of fact, all of the money that was paid—some $40,000 to $50,000 for the real estate was all paid out by me. One reason was that the bank in Boston refused to sell the real estate to a corporation on time. They would sell it if they were going to get all the money, but they wouldn't sell it on time.

Q. When was this?

A. 1935. Then we bought more a little later, a larger strip when we needed larger towers, and all of that money I paid. But, of course, when I paid it to the Sanfont Realty Company, the books of the Sanfont Realty Company would show that they owed me so much money. That was very simple.

Well, that belonged to Mr. Bulova so that was very
129 easily accounted for, some $7,000.

Q. When was that that you paid that $7,000?

A. Oh, I think that was in 1938 or 1939, when we bought the larger tract of land, as I remember, and then I paid him, over a period of time, some $6,000, 1938, 1939, 1940, and 1941.

Q. How did you pay him that?

A. I paid him that in cash.

Q. By check?

A. No, no. I did not give him a check. I gave him cash for that amount, and then in December, I think—

Q. Any records made of that?

A. Yes.

Q. Any records made of those payments?

A. Well, only the checks.

Q. I thought you said it was cash.

A. I got the money out of the bank.

Q. Well, you mean out of your savings account?

A. No, sir.

Q. I don't quite understand you. I thought you said you paid Mr. Bulova in cash.

A. I did, cashed a check.

Q. Oh, I see what you mean.

A. And after that, last fall, I paid him $20,000. That was in a check.

130 Q. And that adds up to $27,000, you say, for the realty, and what was the total of the small amounts?

A. I think $6,500.

Q. That is $33,500. How much overpayment was it, do you recall?

A. Oh, only about $2,000.

Q. Over payment?

A. That is right.

Q. To Mr. Bulova for his original loan?

A. That is right.

Q. Explain to me again, will you, how you made those payments totaling $6,500, I think you said, to Mr. Bulova.

A. I paid them in cash.

Q. You mean in greenbacks?

A. In greenbacks, yes, sir.

Q. Which you had obtained how?

A. By writing out a check and going to a bank and getting the money.

Q. Cashing them. So you have those checks, canceled checks, as evidence of those payments?

A. That's right.

Q. Some notations made on the checks?

A. No, sir.

Q. How do you know they were payments for Mr. Bulova?

A. I recall very distinctly. I seldom had to draw
131 out sums of that size for cash, seldom did.

Q. You have those checks?

A. Yes, sir.

Q. Those began when?

A. I think 1941, 1942 and 1943.

Q. I believe you mentioned that they began in 1938 a few minutes ago.

A. What is that?

Q. That those payments began in 1938 and extended up to 1940.

A. Yes. I think I was in error. I think they were all paid out later.

Q. Beginning in 1940 and 1941?

A. That is correct.

Q. That is the sum total of the records you have of this loan with Mr. Bulova?

A. Yes, sir.

Q. A credit on the books of WCOP to you for about $7,000?

A. Sanfont Realty Company.

Q. Sanfont Realty Company?

A. That is right.

Q. The checks payable in cash, which run from about 1941, 1942, and the recent check for $20,000?

A. That is right, plus the amount that I had ad-
132 vanced previously, previous to then.

Q. You mean $12,000?

A. That is right.

Q. How do you recall these amounts? Have you looked at the checks recently?

A. Yes, sir.

Q. Do you have the check or any evidence of your advance to the Sanfont Realty Company?

A. The books.

Q. The books of the Sanfont Realty Company?

A. Yes, sir.

Q. Yourself, you have none?

A. No, sir.

Q. But you do have the checks on the $6,500?

A. Yes, sir.

Q. Small payments?

A. That is right.

Q. Was that $20,000 payment in one—

A. Check.

Q. —in one check?

A. That is right.

Q. Well, the date of that. Can you give me that?

A. I can't give you the exact date. It was—I think November, November or December, 1943.

Q. Of 1943?

133 A. Yes, sir.

Q. Do you happen to have it with you?

A. Yes, sir.

Q. On what bank was it drawn, do you remember?

A. Yes, the Chase National Bank. It was a check of the —wait a minute, I will tell you.

Q. You say the Chase National Bank?

A. Yes, sir.

Q. At the main office or at some branch?

A. I think the 48th Street Branch.

Q. Do you have an account there at the 48th Street Branch?

A. Yes, sir.

Q. Any other branch?

A. No, sir, but as I was about to say and couldn't recall for a moment, the check was a check drawn by the Atlantic Coast Network.

Q. What is that?

A. That is a corporation that Mr. Cohen and I—two Mr. Cohens and I are interested in.

Q. Who else is interested in it?

A. We are the only stockholders.

Q. You are the only stockholders?

A. That is right, but we clear a lot of things through that.

134 Q. What is the capital of that corporation?

A. Capital? I don't recall that. I don't recall. It has been in existence for—oh, seven or eight years.

Q. What is its principal business?

A. Well, it was created to become a little network, but it did not—I am talking now about the American Broadcasting Company when it was first created. It was organized as the American Broadcasting Company and then later changed to the Atlantic Coast Network. Under the name of the Atlantic Coast Network it became a small network for a short time, just before the war.

Q. Atlantic Coast Network—is that the corporate name of it now?

A. Yes, sir.

Q. And that is a change of name from the American Broadcasting Company?

A. That is right, and a lot of things were cleared through that corporation.

Q. And you and Mr. Sanford Cohen and George Cohen were the owners of the American Broadcasting Company before it changed its name?

A. Yes, sir.

Q. When was it set up, organized, the American Broadcasting Company?

A. Oh, I should have to say about 1940, 1938, 1939,

135 1940. I can not remember exactly.

Q. About what time did you make your arrangements with the Cohens to relieve you of $8,000, you said it was, of the obligations?

A. Approximately. Oh, that was done at different times because the amount was not decided upon at the time the negotiation was made. Our understanding was one thing and we changed it a little later, and it was adjusted to that amount, but when that was done was not until—oh, last year. There was no way of knowing because I did not

Q. That was all handled, wasn't it, at the closing, they were to be paid?

A. They were to be.

Q. Out of the proceeds of the $52,500?

A. Yes, sir, but I think it was days afterward when all the bills and checks were paid.

Q. Yes, sir, the debts of the corporation, but Mr. Eynon and Mr. Phelan, I believe, were paid their $2,500 perhaps before the debts?

A. Before?

Q. Before the debts were paid.

A. That I don't know.

Q. During the course of the closing, there was a directors' meeting, was there not, in Mr. Davison's office?

A. I believe there was.

Q. Let me show you the book of the lengthy meeting of the board of directors of March 25, 1937, held at the office of Barker, Davison & Shattuck. That was at Mr. Davison's office?

A. Yes, it was.

Q. And at this meeting there were present Messrs. Nordblom, Eynon, Phelan, John A. Breen, George A. Crockwell, and Mr. Davison acted as clerk. Then, during that
139 meeting, Mr. Eynon resigned as vice-president and director?

A. Yes.

Q. And Mr. Lafount was elected as director and Mr. Phelan resigned as vice-president and director, and Mr. Ben S. Fisher was elected a director.

The minutes further reveal that Mr. Crockwell resigned as treasurer and director and Helen Rose was elected as treasurer. Who was Helen Rose?

A. Mr. Cohen's secretary.

Q. Mr. Nordblom, as shown by the minutes, also resigned, did he not, as a director, as well as Mr. John A. Breen, and Mr. Nordblom also resigned as president?

A. Yes, sir.

Q. And thereupon Mr. Lafount was elected president?

A. That is right.

Q. That was a directors' meeting held during the course of the closing, was it not?

A. That is correct.

Q. So that at that time there was a complete change of officers and directors, was there not?

A. Yes, sir.

Q. There was not one of the old officers and directors continued on at that time?

A. At that time? That only lasted for a few days.

Q. There was a change a month or so later?

140 A. Was there? Anyway, at that time, that is correct.

Q. The meeting of the board of directors was held at which Messrs. Lafount, Fisher, and Nordblom was present, on March 25, 1937, was the one at which you closed out the account of the corporation with the Pilgrim Trust Company and opened a new one at the State Street Trust Company?

A. That is correct.

Q. And you and Helen Rose, or either of you, are authorized to sign checks of the corporation upon that account?

A. Correct.

Q. What took place with respect to the issuance of stock at that time?

A. I suppose the stock book is the best evidence, but as I remember it, I think the Crockwell stock was made available to me rather promptly, and I think it was probably a month or two before the stock, Mr. Nordblom's stock, 300 shares, was sent to me, for Mr. Cohen, but certainly it was mailed from Mr. Davison's office to me as soon as we had time to take care of it.

Q. There were temporary certificates, were there not, issued at the closing, which were later replaced by the permanent certificates as shown by the stock of the corporation?

A. I think that is correct, yes, sir.

Q. And the permanent certificates reflect the trans-
141 action, so far as the temporary certificates were concerned. In other words, the permanent certificates were issued on the same basis as the temporary certificates?

A. As nearly as I can recall, I don't know. I think that is correct.

Q. You recognize this as the stock book of the licensee, do you not?

A. Yes, sir.

Q. On April 23, 1937, there were issued the following certificates, were there not, to George A. Crockwell:

Certificate A-1 for 90 shares of "A" or preferred stock;

Certificate A-2 for 455 shares of "A" stock; and

Certificate A-3 for 455 shares of "A" stock.

Each of those three certificates was signed by you as president, and Helen Rose, as treasurer?

A. That is right.

Q. And I think we might trace through the rest of the transactions in the "A" stock and get those out of the way. Mr. Crockwell found it necessary, I think you will recall, to pledge his stock. He pledged the 1,000 shares of "A" stock for a loan with the Raldne Realty Company.

A. I think you are in error on that. I believe it was 300 shares. I don't want to be technical, but I don't know. My 900 from this.

Q. At least 900?

142 A. At least 900. Doesn't this tell it?

Q. Yes.

On June 29, 1938, 100 shares of the "A" stock was transferred to the name of Lester Endlar. That is a transfer from certificate A-2, which was for 455 shares, 100 being transferred to Endlar and 355 were certificate A-5, on June 29, 1938, to George A. Crockwell.

In other words, Mr. Crockwell transferred 100 of his shares to Mr. Endlar and took the balance back to himself?

A. Yes, sir.

Mr. Fisher: That is the same as on our Exhibit 5 you are following, aren't you?

Mr. Shuebruk: Yes.

By Mr. Shubruk:

Q. Then you did learn at some later date that there was a pledge of 900 shares of the "A" stock which stood in Mr. Crockwell's name—Raldne Realty Company, did you not? That is Mr. Endlar.

A. No. Oh, is it the same man?

Q. The same, I believe.

A. Yes. My attorney advised me of that loan and the fact that it was new.

Q. And they were put up—the 900 shares were put up for auction and those were bid in on March 8, 1939, for $2,450.

143 A. That's right.

Q. Who handled that transaction, do you recall?

A. Mr. Davison.

Q. Mr. Davison. You sent him a check to take care of the purchase price and he bid them in for you?

A. That is right.

Q. That was the sale of certificates A-1, A-3, and A-5, I believe.

Mr. Fisher: That is right.

By Mr. Shuebruk:

Q. A-1 for 90 shares, A-3 for 455 shares, and A-5 for 355 shares?

A. Yes, sir.

Q. And then certificate A-6 was issued to you for those 900 shares on March 15, 1939, according to the stub.

A. Yes, sir.

Q. Of the stock book?

A. That is right.

Q. That left 100 shares of the "A" stock outstanding, did it not?

A. It did.

Q. Will you tell me how you acquired that?

A. By purchase.

Q. From Lester Endlar?

A. Yes, sir.

144 Q. And that was in September of 1940?

A. Yes, sir.

Q. And you paid $3,100 for it?

A. Yes, sir; and that was handled by Mr. Davison.

Mr. Fisher: What is the date of that stock certificate, Mr. Shuebruk?

Mr. Shuebruk: I am just coming to that.

Mr. Fisher: All right.

By Mr. Shuebruk:

Q. That 100 shares which you purchased from Mr. Endlar was then transferred to your name and a certificate was issued to you for 100 shares on March 31, 1941?

A. Yes, sir.

Q. Certificate A-7?

A. That is right.

Q. Do you recall what the reason for the delay in issuing that certificate was, Mr. Lafount? You purchased it, I believe, in September of 1940 and the certificate wasn't issued until the following March.

A. It was on account of someone's being out of the city, but I have forgotten just who.

Q. Now, let us go to the "B" stock, Mr. Lafount. On the same date, dated April 23, 1937, same date as the original issue of the "A" stock, certificates B-1 and B-2 for 100 shares were issued to George A. Crockwell.

145 A. Yes, sir.

Q. And he acknowledged receipt of them as shown by the stub on the 29th of April, 1937?

A. That's right.

Q. Then let me jump, if I may, to certificate B-5 for 100 shares, which the stub shows was issued on April 23, 1937, to Robert C. Nordblom.

A. Yes, sir.

Q. That 100, represented by certificate B-5, to Mr. Nordblom, and the 200 shares to Mr. Crockwell leaves 700 shares.

Now, those 700 shares were issued as follows, were they not: Certificate B-4 for 400 shares was issued April 23, 1937 to you.

A. That is correct.

Q. And the stub bears the notation, "Mail registered 4/7/37."

A. That's right.

Q. That, I presume, was a notation made in Mr. Davison's office?

A. I think so.

Q. And certificate B-3 for 300 shares was issued in the name of Robert C. Nordblom on April 23, 1937. The stub of that certificate bears the notation, "mail registered to Lafount 4/30/37."

146 A. That's right.

Q. Each of these original five certificates, I believe, were signed by you as president, and by Helen Rose as treasurer?

A. Yes, sir.

Q. Those five certificates B-1 through B-5 account for a total of the original issuance of 1,000 shares of "B" stock.

Now, certificate B-3 was issued in Nordblom's name but mailed registered to you?

A. That is right.

Q. You received that?

A. I think so.

Q. Will you explain to me why the transaction was handled that way?

A. I am sorry, I don't know. I don't recall.

Q. You don't recall?

A. Why it was issued to him.

Q. Why it was issued in Nordblom's name?

A. No, I do not.

Q. You testified that Sanford and/or George Cohen were the purchasers of the stock.

A. That is correct.

Q. And Mr. Fisher signed a contract with Mr. Nordblom for the purchase of 300 shares?

A. That is right.

Q. Would this 300 shares be the same 300 shares as
147 covered by the contract which Mr. Fisher made with Mr. Nordblom?

A. Yes, sir, I think it would be the same 300 shares.

Q. Why would not the certificates have been issued to Mr. Cohen or Mr. Fisher?

A. I should say that they were issued to neither Mr. Cohen nor Mr. Fisher, particularly because by this time we are beginning to find out that there are so many difficulties in connection with the transfer that Mr. Crockwell had complained that Mr. Nordblom is not satisfied, that Mr. Nordblom agreed to remain, in effect, the owner until the troubles were all ironed out.

Q. How soon after the closing on March 25 was this?

A. Oh, it would be a month or two later.

Q. Weren't these certificates, the permanent certificates, dated, each of them, on April 23, 1937, and apparently delivered about the 29th or the 30th, issued in accordance with the understandings and contemplations of the parties on March 25, 1937?

A. Yes, sir. That would be about two months later, or a little more.

Mr. Fisher: One month.

Mr. Shuebruck: One month.

The Witness: March, April 30. Yes, about a month later. That is correct.

148 *By Mr. Shuebruk*:

Q. You said these were issued, probably, in accordance with the understandings of the parties at the closing of March 25, 1937.

A. In so far as the transactions could be completed at that time. The transaction was not ever completed until November, 1943.

Q. Wasn't the transaction completed on March 25?

A. Why, this stock could have been issued then—the stock could just still have been issued. As far as I am concerned, not being an attorney, I don't know, but the stock could have been issued to either Mr. Fisher or Mr. Cohen, either one, but I suppose Mr. Davison or the attorneys figured it was the better way. If there was some understanding we left it in the name of Mr. Nordblom and Mr. Nordblom agreed to act as director and continue as a director until some of these problems were ironed out.

Q. When did the trouble which you say arose in connection with Mr. Nordblom develop? At what time was that?

A. Well, it was rather soon. I think the following day I was told by Mr. Crockwell that Mr. Nordblom was dissatisfied.

Q. The following day following what?

A. March 25.

149 Mr. Shuebruk: I would like to offer as Commission's Exhibit 7 a photostat of certificate B-3 of the stock of the licensee. The photostat shows both the stub and the canceled certificate.

The Examiner: Objections?

Mr. Fisher: No objection, your Honor.

(Commission's Exhibit No. 7 was received in evidence.)

By Mr. Shuebruk:

Q. Was it contemplated at the time of the closing on March 25, 1937, that the certificate B-3 would be issued in this form, in the name of Mr. Nordblom?

A. No, sir.

Q. It was not?

A. No, sir.

Q. How was it arranged at that time?

A. Nothing was said about it.

Q. Temporary certificates were issued at that time, at the time of that closing, were they not? A. I think so, yes.

Q. Do you recall how those were issued?

A. No, I do not.

Q. Was the certificate issued in the name of either of the Cohens or Mr. Fisher?

A. Actually there was one to Mr. Fisher. I don't know that.

150 Q. For 300 shares?

A. I have had those in my possession, but I really haven't looked at them lately. I really don't know. I am sorry but I should think they would be.

Q. Let me show you the temporary certificates which Mr. Fisher furnished me, starting off with temporary certificate No. B-8 for 200 shares to George A. Crockwell.

A. Yes, sir.

Q. 200 shares of "B" stock?

A. Yes, sir.

Q. That is dated the 25th of March, 1937?

A. Yes, sir.

Q. Then certificate B-10, temporary certificate B-10 for 100 shares to Robert C. Nordblom.

A. That is right.

Q. Dated March 25, 1937?

A. Yes, sir.

Mr. Fisher: March what?

Mr. Shuebruk: 25th.

Mr. Fisher: 25th.

By Mr. Shuebruk:

Q. This one for 400 shares, certificate B-7, dated March 25, 1937, to you—

A. Yes, sir.

Q. And the final certificate, No. B-9, to Mr. Nord-
151 blom for 300 shares, dated March 25, 1937?

A. That is right.

Q. These are all temporary certificates and were issued at the time of the closing?

A. That is right.

Q. As a matter of fact, they were issued before the change in officers, were they not, at the closing, all being signed by Robert C. Nordblom as president and George A. Crockwell as treasurer?

A. Yes, sir.

Mr. Shuebruk: I might state for the record that these numbers should not be confused with the permanent certificate numbers. They will overlap in number, but these are merely temporary certificates as a continuation of an earlier stock book, I believe, so the numbers should not be confused with the permanent certificate.

By Mr. Shuebruk:

Q. You received how many certificates at that time, temporary certificates at the time of the closing?

A. I am not sure whether I received a temporary certificate, I am sorry. I probably did, but I don't recall it.

Q. Do you recall how many you would have received?

A. Oh, I should have received one for my own 400 shares. That I should have received.

Q. Temporary certificate B-7?

152 A. Yes.

Q. And did you not also receive temporary certificate B-9 for 300 shares in the name of Mr. Nordblom?

A. That I am not sure—probably did, most likely did.

Q. Accordingly, it was in accordance with the contemplation of the parties at the closing, was it not, that the permanent certificates should be issued in the same way as the

temporary certificates, and that certificate B-3 for 300 shares in the name of Nordblom should be delivered to you?

A. My recollection is, as nearly as I can recall there—there were some discussions as to whether or not to make that out to Mr. Fisher. I did not know whether to make 100 shares to Mr. Sanford Cohen or 300 shares to Mr. Sanford Cohen and 100 shares to his brother.

The Examiner: Now, permanent certificate No. B-3 was issued in lieu of temporary certificate No. B-8.

Mr. Fisher: B-9.

The Examiner: B-9.

Mr. Fisher: That is right.

By Mr. Shuebruk:

Q. You were agreeable to the temporary certificates being issued in this form?

A. Yes, sir.

153 Q. The 300 shares?

A. That is right.

Q. Being issued in Nordblom's name with the certificate being delivered to you?

A. That's right.

Q. And when the permanent certificates were issued, the temporary certificates were in effect duplicated. They were issued in the same way, 400 to you in your name, 300 to Mr. Nordblom?

A. That is right.

Q. But delivered to you?

A. That is right.

Q. 100 to Mr. Nordblom and delivered to him, and 200 to Mr. Crockwell. This is the "B" stock.

A. And I think that stock was endorsed at that time. His stock was endorsed and it was just a question of my finding out which of the Mr. Cohens it was to be issued to.

Q. Certificate B-3 was endorsed at that time, you mean?

A. Yes, sir.
Q. By Mr.—?
A. Nordblom?
A. Yes, sir.

Q. Before it was sent to you?

154 The Examiner: You have reference to the permanent certificate B-3?

The Witness: Yes, sir.

The Examiner: I am not quite clear on that. It was endorsed in blank by Mr. Nordblom and mailed to you?

The Witness: Yes.

(Commission's Exhibit No. 8 was marked for Identification.)

Mr. Shuebruk: I show you Commission's Exhibit 8 for Identification, Mr. Lafount.

The Witness: Yes, sir.

By Mr. Shuebruk:

Q. I ask you if you received that letter?
A. Yes, sir; I remember that.
Q. That is a letter from Mr. Davison, Robert H. Davison, to you, dated April 7, 1937?
A. That is correct.
Q. And it reads as follows:

"Dear Mr. Lafount:

"I enclose Certificate B4 of Broadcasting Service Organization, Incorporated for four hundred (400) shares without par value of the Class B stock standing in the name of Harold A. Lafount and Certificate B3 for three hundred shares of the Class B stock standing in the name of Robert C. Nordblom
155 and endorsed in blank by him. I understand that you will send me the temporary certificates for cancellation. Will you please also sign and return the

enclosed copy of this letter to serve as a receipt for these permanent certificates."

A. That is right.

Q. That indicates, does it not, Mr. Lafount, that you had two temporary certificates, one for 400 and one for 300?

A. I think it does.

Q. And that they were being replaced by the permanent certificates, the B-4 made out in your name and the B-3 for 300 made out in Mr. Nordblom's name and endorsed by him?

A. That is correct.

Q. Wasn't that issuance, Mr. Lafount, in accordance with the understanding at the original—at the time of the closing?

Q. I think it was.

Q. That the certificate should be issued in Mr. Nordblom's name and be endorsed by him and it would be delivered to you?

Q. Well, it was done that way, so I take it it must have been.

Q. And that is the way the temporary certificates were handled at the closing and the permanent certificates confirmed that?

156 A. That is correct.

The Examiner: You offer No. 8?

Mr. Shuebruk: Yes.

The Examiner: No objections?

Mr. Fisher: No.

The Examiner: Admitted.

(Commission's Exhibit No. 8 was received in evidence.)

By Mr. Shuebruk:

Q. You have no explanation as to why certificate B-3, as well as the earlier temporary certificate for 300 shares was

issued in Nordblom's name and delivered to you? A. Yes, I made it.

Q. You made what?

Q. I made that explanation, I thought. I did not know at that time whether it was going to be issued to Mr. Fisher as trustee or the Cohens, or for Mr. Cohen himself, Mr. Sanford Cohen or Mr. George Cohen. I did not know how they wanted it divided.

Q. That wouldn't have been issued in Mr. Fisher's name as agent? He made the contract in that capacity.

A. That I can not tell you. I suppose Mr. Nordblom's attorney wanted it this way. It was endorsed in blank so that we could immediately transfer it as soon as we were ready to, and decide just who was going to take the stock.

Q. Over a month passed from the closing until
157 the permanent certificates were issued, isn't that right?

Q. I think it was.

Q. Temporary certificates issued at the closing?

A. Yes, sir.

Q. It was March 25?

A. That is right.

Q. And the permanent certificates were issued about April 30, dated April 23, and mailed to you on the 30th?

A. That is right.

Q. Why, during that month, wasn't it possible to find out in what proportion that 300 shares was to be issued?

Q. That I couldn't tell you exactly. I think this. I am sorry I can not say this positively, but my best recollection is that complaints had already been made by Mr. Crockwell that he was not satisfied with the transaction, and since it was to be transferred to attorneys, they were very cautious and said: "All right, let's wait and see. Issue the permanent certificates." That is my best recollection of the transaction.

Q. That was Crockwell—he was dissatisfied with it?

A. He told me that Mr. Nordblom was dissatisfied with

it. He had had some negotiations with Mr. Nordblom and part of it was his stock, Nordblom's stock.

Q. Did Mr. Nordblom up until that time tell you he was dissatisfied with it?

158 A. I do not recall.

Q. Did you make any effort to find out when it was?

A. I did.

Q. When was that?

Q. I can not tell you.

Q. Months later or years later?

A. Oh, well, I think months and years, right along. There was much said, very much said about it, particularly with Mr. Crockwell, and certainly some with Mr. Nordblom.

Q. Did Mr. Nordblom ever assert any kind of a claim against concerning these 300 shares?

A. No, sir. He did not file any. I take it that is what you mean.

Q. Did he ever make a claim against you?

Q. He told me he was dissatisfied with the whole transaction, very much dissatisfied, and that he had some adjustments to make with Mr. Crockwell.

Q. Well, he meant, didn't he, that you would get a good buy? He decided that you got the station cheap, but he never asserted a claim against you in connection with these 300 shares?

A. He very definitely gave me the impression that he wanted more money from Mr. Crockwell or me.

Q. In connection with the 100 shares or the 300 shares?

A. In connection with the 300 shares, as I recall

159 it, because the other shares—300 were of the other people's. Only 100 was his, that I purchased.

Mr. Shuebruk: I would like to offer, Mr. Examiner, Commission's Exhibit 9, which is a report filed with the Commission by the licensee, dated March 29, 1937, filed with the Commission—March 31, 1937,

reporting certain transfers of stock as a result of this transaction.

The Examiner: What Commission form number?

Mr. Shuebruk: This is without a number.

The Examiner: That is prior to the number being attached?

Mr. Shuebruk: Pardon?

The Examiner: That is prior to the number being attached?

Mr. Shuebruk: That is right. This is 1937. The number did not come along until 1938.

The Examiner: Objection?

Mr. Fisher: No objection.

The Examiner: Admitted.

(Commission's Exhibit No. 9 was received in evidence.)

By Mr. Shuebruk:

Q. This was the report, Mr. Lafount, which was filed shortly after the closing and transfer of the shares and the change in officers, was it not?

A. Yes, sir.

Q. The closing was on March 25, 1937, and this was dated March 29, 1937, and filed, I think, on March 31st?

160 A. Yes, sir.

Q. It shows transfer from William H. Eynon, 300 shares of "A" stock and 150 shares of "B" stock on March 25, 1937.

A. Yes.

Q. It shows the transfer from James K. Phelan of 150 shares of the "B" stock and 300 shares of "A" stock on March 25, 1937, and transfer by Mr. Nordblom of 100 shares of "B" stock on March 25, 1937.

The form shows, as those who acquired that stock, the following:

Mr. Crockwell as acquiring the 600 shares of "A" stock

for a reported consideration of $26,400, and yourself as acquiring 400 shares of "B" stock for a reported consideration of $30,000.

Mr. Fisher: Signed by Mr. Davison.

By Mr. Shuebruk:

Q. The certificate is signed by Mr. Davison, Robert H. Davison. The total amount paid for the 700 shares was $52,500.

A. You are not referring to this now?

Q. No.

A. Yes, sir.

Q. And that went out at a price of about, a price of exactly $75 a share?

A. Yes, sir.

161 Q. The report at this time shows a transfer of 400 shares for $30,000 consideration.

A. That is correct.

Q. That is $75 a share.

A. Yes, sir.

Q. In other words, the report does not show that 400 shares were sold for $48,000, as the contract provided.

A. I explained to you this morning why that was done and also—shall I repeat what I said this morning?

Q. No, I recall what you said.

A. But also may I add this: I was at a loss to know whether or not to report all of the amounts of money that went to pay debts, as being the purchase price of the stock. I don't know yet whether it would be proper. That is what it cost me.

Q. That is what it cost you?

A. That is what it cost me, but whether or not it was definitely the stock of the stock, or whether I should have deducted that money that was paid for the obligations of the corporation, I don't know, but anyway, I assumed that it was $52,500 which should be the amount, because of the

contract, and then, based on the Cohens' sharing with me the amount of money that I paid for the obligations of the corporation, it brought that down, $30,000 and $75 a share.

Q. Now, that is a report of the transfer of 400 shares?

162 A. Yes, sir.

Q. On the purchase by you, 100 of it came from Mr. Nordblom and 300 of it came directly from Mr. Crockwell and indirectly from Eynon and Phelan?

A. Yes, sir.

Q. Why was there not a report of the additional 300 shares issued in Nordblom's name, and the certificate which was delivered to you?

A. In Mr. Nordblom's name?

Q. Yes, the certificate being 3.

A. Because it was under contract. Mr. Cohen or Mr. Fisher, to be exact, was agreeing to buy it.

Q. Well, it had already been done at the time this report was filed.

A. It did not change his status. As far as the Commission was concerned, it was simply another certificate. It had not changed his stock interests in any way, shape or form.

Q. He had sold it.

A. I mean the recording of his certificate, the new certificate for the old, would have accomplished no purpose.

Q. Mr. Nordblom, in addition to selling 100 shares to you, had also sold 300 shares, had he not, pursuant to the contract with Mr. Fisher?

A. That is right.

163 Q. And he had divested himself of that stock, although the certificate was issued in his name, for the 300 shares, and delivered to you. He was no longer the beneficial owner of that stock?

A. That is correct.

Q. Why was not that transfer of the 300 shares reported at the same time as the 400 shares was reported?

A. Because we were getting complaints. Oh, you mean by Mr. Nordblom—Mr. Davison at the time, from Boston?

Q. Why didn't the licensee report it?

A. Because—I am sorry. I am not following you. I want to give you the exact answer.

Mr. Davison filed this large report that you have just submitted, in Boston. Now you ask me why this wasn't filed at the same time in Boston?

Q. This report I just showed you, Commission's Exhibit 9, is it?

Mr. Fisher: Yes.

By Mr. Shuebruk:

Q. This contains the report to the Commission that 400 shares of "B" stock had been transferred to you?

A. That is right.

Q. 100 from Mr. Nordblom and 300 from Eynon and Phelan through Crockwell.

Now, at the same time that that 400 was trans-
164 ferred, Nordblom transferred an additional 300 shares of "B" stock, did he not?

A. Yes, sir.

Q. The certificate was issued in his name for 300 shares and the certificate was delivered to you?

A. Yes, sir; mailed to me. That is correct, and I received it.

The Examiner: Just a minute. That was mailed on April 30, 1937, was it not?

The Witness: Yes, sir, and this was filed on—

The Examiner: March 27.

The Witness: Yes, sir.

Mr. Shuebruk: Mr. Examiner, prior to the issuance of the permanent certificate, the 3, there had been issued the temporary certificates which we went through for the same amounts and issued to the same persons.

The Examiner: Also this contract, which is Commission's Exhibit No. 6, which had been executed. Proceed. I just wanted to get it straight in my mind.

By Mr. Shuebruk:

Q. The report was made of the 400 shares, the transfer of that. Why wasn't there a report made of the 300 shares?

A. Because that was done in Boston. I was there. My transaction for my stock was a closed incident. I
165 knew I was going to hold the stock which Mr. Fisher had bought, other stock for and on behalf of Mr. Sanford and Mr. George Cohen. That was to be divided at that time and I did not know how, so the stock was mailed to New York to me, according to this notation, April 30th.

After that, or about that time—and our rules would require that that should have been reported, definitely,—after that we received word from Mr. Crockwell, or about that time, and prior to that time. This was not a closed transaction. We were having trouble, there was trouble.

Q. Was your purchase of 400 shares any more a closed transaction than the purchase of this 300 shares?

A. Yes, sir.

Q. In what way?

A. In the first instance, it was mailed to the Commission immediately. It was a reported transaction. There was nothing—I had no reports of anyone being particularly disgruntled at that time, so I figured that is perfectly all right. The deal is closed and I am going to file mine.

Q. Why wasn't the 300 filed at the same time? At that time no reports had been filed?

A. I am explaining to you, I did not know whom the stock was to be issued to.

Q. The 400 you bought included 100 from Mr. Nordblom, did it not?

166 A. Yes, sir.

You say there was a failure to report the 300 because of some claims which Crockwell said Nordblom had

made, or some dissatisfaction Nordblom had expressed. Didn't that apply equally to the 100 as well as the 300?

A. I am terribly sorry, sir, you don't follow me, and that is because of my inability to express myself.

Q. No, it is all right; go ahead.

A. I am very sorry. The facts are, if I may repeat them again, that my deal included, yes, Nordblom stock, 100 shares. The day we closed our transaction, which was March 25, we were all satisfied. Everything seemed to be all right. The following day I went to New York. Probably that evening Mr. Davison reported my stock as transferred. I asked, "How about this? I can not tell you whose name to put it in. There is no reason why it should be reported in Mr. Nordblom's name. The records already show him as the owner and I can not tell you whether it will be issued in Mr. George Cohen's or Mr. Sanford Cohen's name, or Mr. Fisher may hold it," but I asked him to do that until I could get in touch with Fisher.

Mr. Fisher: With Cohen.

The Witness (continuing): With Cohen; I am sorry, and that is why it wasn't filed that day, but as far as my stock from Stanford was concerned,
167 I had no opportunity to find that there was any complaint or dissatisfaction. It was filed with the Commission the following day. But in the interim, a month or two later—then I got complaints. I am in a position where I am told, Nordblom is dissatisfied. Then, Mr. Cohen, so I am.

Q. Why did you do about Mr. Nordblom's dissatisfaction?

A. I tried my level best to do something with Mr. Crockwell.

Q. Mr. Crockwell?

A. Yes, sir.

Q. Well, that is not particularly pertinent to Mr. Nordblom's interest.

A. I am sorry, sir, I did all my negotiating with Mr. Crockwell, all of it, for that stock and the other, and concerning their relationship, I am not able to tell you just what the details were.

Q. So you saw Mr. Nordblom at directors' meetings every so often, didn't you?

A. The minutes will show they should have been and they were not too frequent. Right at that time we were holding the directors' meeting to change the office, but after that, I can state it was the first of the year before we saw Mr. Nordblom again.

Q. What connection, in your mind, does the report to you by Mr. Crockwell that Mr. Nordblom was dis-
168 satisfied with the deal have to do with reports to the Commission of the transfers of the stock?

A. Well, in my mind, the deal had not been consummated. I had done all that I could. I thought everyone was satisfied. I had paid the money and done everything that I felt I was required to do under the terms of the contract, but when I found out that Mr. Nordblom, and certainly Mr. Crockwell—certainly Mr. Crockwell was dissatisfied with the deal and I was being threatened—and I don't want to interpolate too much, but I wish you could have been there and perhaps know Mr. Crockwell, and you would have sympathized with me, but Mr. Crockwell was of that disposition and temperament so that I went through plenty with Mr. Crockwell with accusations of all kinds, and I wasn't sure what had happened or what was going to happen.

Naturally, I told my associates in the deal—naturally I told them, and they said, "All right, let it stand until Mr. Nordblom and Mr. Crockwell thrash out their problems," and it was pretty heavy for the first year and a half, two years, and then came along someone else and said they owned the whole thing, and in the form of a Mrs. Whitwell we were then confronted with another crisis and hearings and lawsuits and trips—thousands of dollars spent in trying

to iron out all those things with someone whose character is best revealed—and I don't want to lecture and I hope you will call me down if I am saying too much—
169 is best revealed in the very material which you have presented here which shows that he wrote to me and told me—he said, "You know, this stock belonged to Mrs. Whitwell when I bought it at auction."

That is the character of the man I had to deal with. That ought to tell you.

Q. What about Mr. Nordblom? You saw him once in a while.

A. Mr. Nordblum is a thorough gentleman. I think you know it.

Q. You saw him once in a while, and what did you do to try to compose your difficulties? Did you discuss any price with him?

A. No, sir; I did not. I talked with Mr. Nordblom and asked him if he was ready yet to say he was satisfied, and he said no.

Q. When was this?

A. Oh, during 1938.

Q. What about 1937?

A. And 1937. I can not give you any exact dates, but I recall definitely talking to him, and to Mr. Davison, his attorney, and I think that he even threatened to sue Mr. Crockwell.

Q. You have had a long familiarity with regulation
170 of radio. Is there any oethr significance that you can see in the failure to report the transfer of this additional 300 shares, either to yourself or to Mr. Fisher, or the Cohens?

A. No, sir.

Q. You are familiar with section 310 (b)?

A. Yes, sir.

Q. Do you know what it provides?

A. Well, I couldn't exactly quote it.

Q. In substance?

A. In substance; yes, sir.

Q. Will you tell me?

A. If I recall it correctly, it provides that 60 days after the contract is entered into—no, scratch that.

Q. You are thinking of some other rule. Section 310 (b) provides there may not be a transfer of control without the consent of the Commission.

A. Oh, yes, yes, that is right.

Q. You were there, you yourself, or together with your associates, acquiring control of the corporation, weren't you?

A. I should say not.

Mr. Fisher: His associates, yes.

The Witness: Control? The majority of the stock? There was no control anywhere. If I bought
171 51 per cent of the stock, I should be taking control. That is my interpretation.

By Mr. Shuebruk:

Q. But there were 700 shares being transferred here.

A. Not to me.

Q. 400 to you and 300 to the Cohens. The Cohens were your attorneys.

A. They were buying the stock for their own use and benefit and paid their own money for it.

Q. They were in the same office with you?

A. I was in their office when I was in New York. My home was in Washington. I lived here, Wardman Park Hotel. I go to New York and when I was there I had a desk in their office.

Q. You both work for Mr. Bulova?

A. That is right.

Q. They were your attorney, as well as Mr. Bulova's attorney?

A. Yes, sir.

Q. You were associated with the Cohens in other business transactions.

A. No, sir.

Q. You, as well as both of the Cohens, are directors and officers, either one or the other, of the Bulova stations?

A. We are officers in the same corporation, but we are not investors together. We are not associated
172 in the sense of owning stock in any other enterprise.

Q. And there was one purchase price of $52,500, for the 700 shares.

A. There were two purchase prices, as the contracts both reveal. Added together, they total $52,500.

Q. Well, as a matter of fact, it was understood, wasn't it, that the per share price was $75 a share?

A. That is right, I testified to that, and that is what I mean. If, sir, I was wrong, I made a mistake, but I believe it is not wrong. I believe that is definitely consistent with the law and certainly it is with my interpretation of it.

Q. When did you make your arrangements with the Cohens for the purchase of this 300 shares?

A. Before the transaction was made, I think it was only a very few days before March 25.

Q. And you talked with Sanford Cohen?

A. Yes, sir.

Q. And what did he say?

A. He said, "If you have got something that looks like it will make some money, I am in with you. I would like to buy some stock."

Q. And then the stock that was to be delivered to the Cohens, that the Cohens were to receive, was to be issued in Nordblom's name and handled by you?

173 A. That is correct. I handled all the transactions, everything for all of them.

Q. And the reason, you say, that the stock was not transferred to anybody else's name than Nordblom's, was because it was uncertain just who was buying the 300 shares?

A. That it wasn't done at the minute, yes, sir.

Q. Now, when did you find out what the proportions were to be between the two Cohens?

A. In November, 1943.

Q. Not until that time?

A. No, sir.

Q. It would have been an easy matter. They were in the same office with you. It would have been an easy matter, wouldn't it, to have found out how they wanted it issued, 150 apiece, or 200 to one and 100 to the other?

A. I think that sounds very simple and very logical, but perhaps you are forgetting that they bought some other stock besides.

Q. They bought some other stock besides?

A. Yes.

Q. What do you mean?

A. Besides the 300 shares.

Q. At a later date?

A. Yes.

Q. But at this time, or at least a year and a half.

174 A. Well, there was no discussion and no need because neither one of them wanted it at that time. They did not want it issued.

Q. They did not want the 300 issued?

A. They did not want the 300 issued until Nordblom was satisfied, and when Mrs. Whitwell appeared on the scene, they did not want it issued and so advised me.

Q. Then this stock would have been begging and nobody had no interest in it. Nordblom wanted to sell it; the Cohens did not want it. What happened? You were in the middle and needed it?

A. It was in the hands of Mr. Cohen, was in a safety deposit box, involving only a few thousand dollars, and it was left alone, and we tried diligently, and spent more than that stock was worth in lawsuits to try to adjust the title to these things, or adjust the title, which we thought we had, and the courts said we did have.

Q. If you had reported this transfer of 300 shares to

Stanford Cohen, that would have indicated, wouldn't it, there had been a substantial change in majority ownership, substantially new parties in the corporation as compared with what there had been?

A. It would show a change, definitely.

Q. That the majority of the stock had been transferred at one time from three former owners to three additional owners, three new owners?

175 A. It would show that, obviously, but that would not mean that that was control.

Q. Well, did not control pass at this time?

A. No, sir.

Q. You did not acquire control of this corporation?

A. No, sir.

Q. You just acquired a minority interest?

A. That is right.

Q. Who had control after the transaction?

A. No one.

Q. Who ran the corporation?

Mr. Fisher: No one had control before.

The Witness: No one had control before. It was owned by a number of stockholders.

The Examiner: Just a minute. The statement is a conclusion of the law and will be stricken from the record; the answer of the witness which echoes the statement of the lawyer will also be stricken from the record.

By Mr. Shuebruk:

Q. It was part of the arrangement for the transfer of the 700 shares that the old officers resigned, that the transfers be cancelled, that the preferred stock which had higher rights in terms of liquidating value and dividend rights, be reduced considerably. Those things were

176 all a part of the transaction.

A. For the 400 shares.

Q. They were required to be done by you?

A. By me for the 400 shares. Likewise, it was required that the debts be paid off.

Q. Now, in the case of the transfer of less than a controlling interest, is it customary to go to those elaborate precautions?

A. When you are buying an institution that is bankrupt and is as badly involved as that was, yes, sir.

Q. By buying an institution, what do you mean?

A. Buying an interest in an institution that is practically bankrupt.

Q. A minority interest, not controlling.

A. A minority, by money, was saving the institution.

Q. When the old officers and directors resigned, you became president?

A. Yes, sir.

Q. And director?

A. Yes, sir.

Q. Mr. Fisher became a director?

A. Yes, sir.

Q. And Helen Rose became treasurer?

A. Yes, sir.

Q. You indicated a short while ago that directors' meetings were not too frequent, that you did not have very many directors' meetings.

177

A. I don't recall just how many. I think that they were not too frequent, but the minute books are here and will reveal the facts.

Q. You own 400 shares and vote those 400 as well as the additional 300 that were in Nordblom's name?

A. Oh, no, I did not vote them. Mr. Nordblom voted for those shares, his shares.

Q. He voted 400 shares?

A. I think so.

Q. You are sure about that?

A. No, sir. I think the minute book will show that.

Q. You cannot recall whether you voted 700 yourself or not?

A. I am sure I did not, or at least I am reasonably sure. I can not recall exactly. I can never recall that, but I think not.

Q. Do you recall testifying about a year ago to the fact that you had voted that stock since 1937?

A. No, sir; I don't recall that, unless it was before the committee up at the Capitol; is that what you mean?

Q. Yes.

A. Oh, yes, I can remember that.

Q. You do recall testifying to that fact?

178 A. Yes, sir, and if you want an explanation I shall be glad to go all through that with you.

Q. Any explanation you want to give, Mr. Lafount.

The Examiner: You were testifying under oath there, weren't you, Mr. Lafount?

The Witness: Yes, sir; yes, sir.

By Mr. Shuebruk:

Q. I think, to save time, I can indicate the directors' meetings that have been held since the transfer of March 25, 1937. You testified that on March 25 you, Mr. Fisher and Mr. Nordblom constituted the directors of the corporation, and then a month later, April 29, 1937, at the meeting of the board of directors, the minutes, as contained in the licensee's minute book, show that Mr. Fisher resigned as director and Mr. Davison took his place.

A. That is right.

Q. So that from then on for some time, Mr. Davison, Mr. Nordblom, and yourself were the directors of the corporation?

A. Correct.

Q. I think the minute books will reveal, if you want to take the time to check them, those things, but I do not think it is necessary. There were directors' meetings on the following dates: One on April 29, 1937; one on January

19, 1938 at the time of the annual stockholders' meet-
179 ing; one on March 3, 1938, and one on August 24, 1938.

While we are on that meeting, I might have you point out at the directors' meeting on August 24, 1938, that Helen Rose resigned as treasurer of the corporation and George Cohen was elected to succeed her.

A. Yes, sir.

Q. Then there was another directors' meeting at the time of the anual meeting of stockholders on January 18, 1939, one on February 11, 1939, one on January 22, 1940, at the time of the special meeting of stockholders in lieu of the annual meeting, one on March 18, 1941, at the same time as a special meeting of the stockholders.

Mr. Fisher: Wait a minute. March 18? Yes.

Mr. Shuebruk: One on March 18, 1942, at the time of the special meeting of the stockholders in lieu of the annual meeting; one on April 6, 1943, at the same time as that of the stockholders, in lieu of the annual meeting.

Mr. Fisher: May I ask a question here, your Honor?

The Examiner: Yes.

Mr. Fisher: He is enumerating various stockholders' meetings.

Mr. Shuebruk: Directors' meetings.

Mr. Fisher: No; those are stockholders.

Mr. Shuebruk: Well, of course, they are the same dates.

Mr. Fisher: Oh. And all those were stockholders'
180 meetings at the same time, weren't they?

Mr. Shuebruk: Not all of them. I indicated at which time there were stockholders' meetings as distinguished from directors' meetings.

Mr. Fisher: May I ask this question here? As a matter of fact, didn't Mr. Nordblom appear at

all of those meetings as a holder of 400 shares of common stock?

Mr. Shuebruk: That is what the minutes reveal.

The Examiner: Mr. Nordblom appeared as the holder of 400 shares. What is the last date?

Mr. Fisher: April 6, 1943.

Mr. Shuebruk: April 6, 1943, was the last.

The Examiner: All right; proceed.

By Mr. Shuebruk:

Q. And April 4, 1944, there was another directors' meeting, and at the same time a special meeting of stockholders in lieu of the annual meeting.

A. That is the total of directors' meetings that have been held since March 25, 1937.

The Examiner: Also stockholders' meetings, too, that is. That concludes stockholders' meetings.

Mr. Shuebruk: I think that includes all the stockholders' meetings, as well, although I wasn't endeavoring to enumerate the stockholder's meeting.

Mr. Fisher: They were. I was following that.

181 Mr. Shuebruk: There has been one stockholders' meeting a year.

The Examiner: All right.

By Mr. Shuebruk:

Q. Do you recall when Mr. Nordblom ceased being a director?

A. No, I don't recall.

182 Q. How long ago would you think it was?

A. Oh, I should think about a year ago.

Q. That would make it the fall of 1943?

A. Probably a little more than that. I am not sure.

Q. Do you recall who replaced him as a director?

A. I think it was Mr. Davison.

Q. Mr. Davison was already in as a director, having replaced Mr. Fisher, was he not?

A. Oh, yes. I expect, then, it was Mr. Cohen, Mr. Sanford Cohen.

Q. Mr. Sanford Cohen replaced Mr. Nordblom?

A. That is right.

Q. Do you recall when he became a director?

A. No, I don't. About a year and a half ago, I think two years, perhaps. I don't recall.

Q. I think the minute book will establish the date for us, Mr. Lafount. There was a special meeting of stockholders in lieu of the annual meeting on March 18, 1941. The directors elected in the ensuing fiscal year were yourself, Mr. Davison, and Mr. Sanford Cohen.

A. Yes, sir.

Q. Mr. Nordblom got out as a director at that time, and, as we will go through later, he had disposed of his 100 shares and the B stock at that time, had he not?

A. That is correct, yes, sir.

183 Q. But he continued to be listed, does he not, at the next minute's meeting on March 18, 1942, on the minute books of the corporation as the holder of 400 shares of B stock?

A. That is right.

Q. Although he had, through such arrangements as you found necessary to work out with him, effectively disposed on March, 1942, of all of his extra stock?

A. He sold all his additional shares.

Q. All his additional shares, as well as the 300 which he disposed of on March 23, 1937. He was, however, still carried on the minute book as the owner of 400 shares.

Mr. Fisher: May it please your Honor, I think the record will show he was present at these stockholders' meetings with 400 shares, at all these meetings.

The Examiner: I think that is what that minute shows.

Mr. Shuebruk: That is right.

Mr. Fisher: That is what the minute shows.

By Mr. Shuebruk:

Q. Had Mr. Sanford Cohen or George Cohen ever attended any stockholders' or directors' meetings?

A. I think not.

Q. Since the stock has been transferred to Mr. Sanford Cohen's name, he has always given you a proxy, has he not?

A. I believe that is correct.

The Examiner: On what date was that transfer
184 to Sanford Cohen made?

Mr. Shuebruk: We will come to that in a few minutes, Mr. Seward.

The Examiner: All right.

By Mr. Shuebruk:

Q. And although Helen Rose, on August 24, 1938, was treasurer, and George Cohen thereafter, neither of them ever attended a stockholders' meeting.

A. I think not.

Q. And do you recall that you undertook at each of the stockholders' meetings to make a report of the financial condition of the company in the absence of the treasurer?

A. Yes, sir.

Q. When did you first visit the station, Mr. Lafount?

A. Well, I cannot tell you the exact date. It would be in March, I think, of 1937.

Q. At the time of the closing, or shortly thereafter?

A. I think it was before.

Q. You visited it before the closing. Did you visit it after it?

A. The station?

Q. Yes.

A. Oh, many times.

Q. I mean shortly after the closing. Did you then go up to the station?

185 A. Yes, sir.

Q. What did you tell the employees at that time?

A. Not to be alarmed, that they were not going to lose their positions, and be glad to cooperate with me, and so on.

Q. And it was a week or ten days or so, was it not, before you were able to hire a manager?

A. Probably so.

Q. Mr. Crockwell had been acting as manager and he was out now?

A. And he was out.

Q. Who was the first manager you hired—Cort Treat?

A. Cort Treat.

Q. Who helped you with the station during the interim, before you were able to hire Mr. Treat?

A. Mr. Slattery.

Q. Mr. Slattery of WCOP?

A. Yes.

Q. He was manager of WCOP?

A. Yes, sir.

Q. And you were president of WCOP?

A. That is right.

Q. And then Mr. Treat did not work out very well and you had to get rid of him?

A. That is right.

Q. And you later hired Mr. Lasker?

186 A. That is right.

Q. With whom does the manager check on problems that come up in day-to-day business?

A. The manager?

Q. Yes.

A. He will check with me, the president.

Q. And you maintain a rather close touch with operations?

A. Oh, very close touch.

Q. Day to day?

A. Well, practically. Not always day to day, but practically so. Mr. Lasker is in New York a few days every week, or I am in Boston.

Q. You also put Ashley Robinson who was the bookkeeper at WCOP in as the bookkeeper of WORL?

A. That is right.

Q. The corporation's books were kept at the New York office?

A. No, sir.

Q. The stock books?

A. Oh, the stock books were, yes—no. In this corporation the stock books were kept at Mr. Davison's office.

Q. At the outset, but later, were they not transferred to New York?

A. No, sir. No, I think not, sir. I think they had been there for quite some time. They had been in New
187 York while we made these changes here. I think our stock books have been called for by the Lea Committee on the Hill, and we had them here during that period of time, but previously they were kept in Boston by the clerk.

Q. The corporation maintains a New York office, does it not?

A. It does.

Q. Have you any idea of the annual cost of running that office—about, from your salary?

A. Well, I don't recall exactly.

Q. $5,000 to $10,000?

A. Oh, more than that.

Q. More than that?

A. No, around that. $5,000 to $10,000 will cover it.

Q. And at the time of the—

A. That is at the present time. This was not during back in those years that we had been talking about. For the last two or three years, anyway.

Q. At the time of the transfer, the licensee's Washington attorney was changed, was it not?

A. Yes, sir.

Q. Mr. Sutton had represented the licensee, and Mr. Fisher thereafter represented the licensee?

A. That is right.

188 Q. After you came into the corporation, you say that the capital of the B stock was reduced considerably from something like $92,000 down to something like $56,000.

A. The capital of the B stock.

Q. You thought it was inflated and over-valued and reduced it?

A. I did, upon advice of expert advice.

Q. And you testified, I think, that the corporation was in a very bad way financially at the time you came in.

A. Very, yes, sir.

Q. And needed money rather badly.

A. Yes, sir.

Q. It had an application pending, did it not, for nighttime operation?

A. I believe it did.

Q. And for the purpose of carrying through that application needed additional funds?

A. Yes, I think they needed $25,000 at that time.

Q. And who made that loan?

A. I did.

Q. Out of your own funds, or was that a loan from Mr. Bulova?

A. I think that was out of my own fund, but it may have been possibly from Mr. Bulova, I am not sure.

Q. Have you got any records which will disclose what the situation was?

A. I can look that up, but I don't know at this
189 minute.

Q. Will you do that?

A. Yes, sir. I am sure that I made the loan.

Mr. Shuebruk: I offer Commission's Exhibit 10, for convenience, an exhibit filed in Docket 4206 showing the financial statement of the licensee as of April 30, 1937.

(The document referred to was marked as Commission's Exhibit No. 10 for Identification.)

By Mr. Shuebruk:

Q. That $25,000 that you mentioned is included in that cash in the bank, is that right, as shown on that balance sheet, Exhibit 10?

A. Yes, sir.

Q. What was that, a loan by you?

A. It was advanced—I think it was considered a loan, yes.

Q. No indication of it on the liability side of the balance sheet?

A. I don't see one. That is why I hesitate to say whether that was a loan, or just how it was handled. It was a loan.

Q. It wasn't a mere paper asset?

A. No, sir.

Q. You don't recall how it was put on the corporation's books?

A. No, but the books are here.

190 Q. Would you have somebody—your accountant check the books and see how it was reflected on the corporation's books?

A. I would be glad to, yes, sir.

The Examiner: You offer Exhibit No. 10?

Mr. Shuebruk: I offer Exhibit No. 10.

The Examiner: Any objection?

Mr. Fisher: No objection.
The Examiner: Admitted.

(Commission's Exhibit No. 10 was received in evidence.)

By Mr. Shuebruk:

Q. How was that money made available, Mr. Lafount, do you recall?
A. How was it made available?
Q. Yes. Was it made available by check, your check?
A. I think it was my check.
Q. What bank would that have been drawn on?
A. That I cannot tell you. What was the date?
Q. April 30, 1937.
A. If it was a bank, it would have been the Riggs National Bank in Washington. If it was taken from one of the other accounts at which I may have had a credit, one of the stations, it would have been taken out of there—could have been, I don't recall.
Q. Do you at that time have credits in addition to the $12,000 credit which you had in your account with Mr.
191 Bulova?
A. This is a little later date, isn't it?
Q. Within a month of the same time.
A. Is it?
Q. Yes.
A. That was only with Mr. Bulova. That did not mean that the corporation did not owe me some money. I may have loaned Station WELR $10,000 or $15,000.

(Discussion off the record.)

The Examiner: Note a 5-minute recess.

(At this point, a short recess was taken, after which the hearing was resumed as follows:)

The Examiner: You may proceed.

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(Discussion off the record.)

The Examiner: Note a 5-minute recess.

(At this point, a short recess was taken, after which the hearing was resumed as follows:)

The Examiner: You may proceed.

By Mr. Shuebruk:

Q. How much money have you put into the station altogether, Mr. Lafount?

A. You mean, now, on loans that have been repaid?

Q. Yes, over-all.

A. Something like sixty thousand, sixty-five thousand, seventy thousand.

Q. Does that include the original $52,500?

A. The original fifty-two five was not all mine.

Q. How much of it was not yours?

A. Well, according to the adjustments that I explained, for a time, $30,000 of it was mine. I reported that as being the cost, and later an adjustment was made.

192 Q. And how much did it amount to after the adjustment?

A. About—you mean theirs or mine?

Q. Make it yours.

A. Mine? About $40,000.

Q. And then you find it necessary, because of the loans of the corporation in its early days to advance more money?

A. Yes, sir.

Q. And how much in addition to that forty did you advance?

A. I don't know. I don't recall. $25,000, $30,000, $35,000.

Q. That makes a total of how much you have put in the corporation?

A. But that has been returned.

Q. That has been repaid?

A. That has been repaid.

Q. What do you now have in the corporation?

You have, you say, $40,000 in terms of common stock, and then, in addition, you bought some preferred stock for a total of about $6,000. Do you have any more in the corporation at this time?

A. Only what I invested originally.

Q. Plus the later acquisition of the A stock.

A. That is right.

Q. And how much did your loans amount to in gross over the years since 1937?

193 A. Oh, I think $25,000 to $30,000.

Q. And that has all now been repaid?

A. That's right.

Q. Has the corporation found it necessary to borrow money elsewhere?

A. No, sir.

Q. You, as an individual, have advanced the funds that it was found necessary to borrow?

A. Yes, sir.

Q. Were those your own funds; or did you borrow that, too?

A. I think it was my own funds.

Q. Hasn't the American Broadcasting Company advanced some funds to the corporation?

A. Very likely.

Q. That is the corporation you said, I think, later changed its name to Atlantic Coast Network?

A. That's right.

Q. And it is the corporation which you, George and Sanford Cohen own?

A. That's right.

Q. Was it earlier owned by Mr. Bulova?

A. Was that what?

Q. Was it earlier owned by Mr. Bulova?

A. Earlier? Well, not at the start, but it became

194 his later.

Q. At what time was that?

A. I should think about 1940.

Q. And the two Cohens started it, Mr. Bulova took it over about 1940.

A. That is right.

Q. Who owns it now?

A. Mr. Bulova.

Q. Mr. Bulova owns it now?

A. That's right.

Q. He has owned it since 1940?

A. I think so. That is my recollection, about that time.

Q. And when did the licensee borrow the funds of the American Broadcasting Company, do you recall?

A. If they borrowed—and I think they did—it would be in 1937 and 1938, because that is when they were losing money, operating at a loss, a substantial loss, and many improvements had to be made.

Q. When was the last time that you found it necessary for the licensee to borrow?

A. I think it hasn't borrowed since 1939.

Q. Since 1939?

A. Yes. And may I say, to clarify my statement, with reference to my investment, were I now considering my investment, I should consider it on the basis of the preferred stock having the value of $44,000 and actual cost,
195 and the common stock at something like $8,000 to $10,000, and I might add as my investment all the money that the corporation has made improvements with, rather than take any profits at all out of the station—what has been invested back into it; so, to determine your actual investment, you might figure it up as much as $125,000.

Q. Your individual investment?

A. No, I mean the whole investment of the station.

Q. The whole investment of the station?

A. Yes.

Q. Let me run through, Mr. Lafount, with you the additional transactions on the B stock. We have got through certificates B-1 through B-5, which were all dated April 23 and issued at that time, or within a week thereafter.

The Examiner: 1937.

By Mr. Shuebruk:

Q. 1937. The next transaction in the B stock arose from a loan to Mr. Crockwell and a pledge by him of his 200 shares of the B stock, Certificates B-1 and B-2; did it not?

A. Yes, sir.

Q. He borrowed $5,000 from Mr. Bulova?

A. That is right.

Q. Will you tell me how that transaction came about?

A. He came to me and said that he would like to
196 borrow $5,000 and give us security, 2,000 shares of stock.

Mr. Fisher: 2,000 or 200?

The Witness: 200. I am sorry. Did I say 2,000? That is terrible. I am making mistakes galore.

He said he wanted to borrow $5,000 and give 200 shares of stock as security. I said, "Look, George, it has to be stock. I am president of the corporation. I am president of the corporation. I don't want to have anything to do with the stockholdings. I don't want you to come to me and tell me I am hard boiled if you are not able to pay it. I will arrange to get the loan for you. I want to help you if I can," but he had been such a nuisance I wanted to get him off my neck, so I persuaded Mr. Bulova to lend him the $5,000.

By Mr. Shuebruk:

Q. And that was on July 12, 1937, that the loan was finally consummated and the note was given by Mr. Crockwell to Mr. Bulova?

A. That's right.

Q. The note ran for six months?

A. Yes, sir.

Q. And Mr. Crockwell was unable to meet the payment at the new date?

A. That is correct.

Q. And six months later Mr. Bulova found it necessary to foreclose?

197 A. Six months later than when?

Q. Than the due date, roughly, July 27, 1938, I think.

A. That's right.

Q. And there was a sale of it as to the shares pledged to Mr. Bulova, Certificates B-1 and B-2, each for 100, through R. L. Day and Company for $100?

A. That's right.

Q. As reviewed by the sales slip attached to the Certificate B-1 in the stock book?

A. That's right.

Q. That was sold for $100, and bid in by Mr. Bulova?

A. Well, actually it was bid in by Mr. Davison.

Q. By Mr. Davison for Mr. Bulova?

A. I think that was the way it was done.

Q. And then what happened to that stock?

A. And that assignment was immediately transferred to Mr. Cohen. Sanford Cohen agreed to take that stock if Mr. Bulova did not want to have anything to do with his company.

Q. Do you recall what arrangements were made between Mr. Bulova and Mr. Cohen with respect to that?

A. I don't know. But all Mr. Cohen was required to do was return the $5,000.

Q. In other words, Mr. Bulova had $5,100 invested in the stock, $5,000 for the loan and $100 for the sales price at the foreclosure?

198 A. That is right, and I remember some discussions about interest, and he refused to take any interest. That is all I can remember about it except that it was transferred to Mr. Cohen. Mr. Cohen had instructed me, as I recall it now — He asked Mr. Davison to bid it in, in his, Mr. Cohen's name.

I am sorry I cannot tell you the details, but I think there

is some law in the State of Massachusetts which would require certain procedure here which would have delayed the sale of it to someone else, under which it could be foreclosed in the name of Mr. Bulova and sold to him without any difficulty, so it was taken in Mr. Bulova's name and then assigned to Mr. Cohen.

Q. Who made the $100 to Mr. Davison, Mr. Bulova or Mr. Cohen?

A. I did.

Q. You did?

A. Yes, sir.

Q. And was repaid by who.?

A. It was repaid to me by Mr. Cohen.

(A document was marked as Commission's Exhibit No. 11, for Identification.)

By Mr. Shuebruk:

Q. Let me show you a Commission exhibit marked number 11 for identification. That is a copy, is it not, of the bill of sale attached to Certificates B-1 and B-2, 199 for the corporation's stock book.

A. Yes, sir.

Q. And that is a bill of sale from Mr. Bulova to Sanford H. Cohen of Certificates B-1 and B-2 and the shares represented thereby?

A. That is correct.

Q. For $100?

A. Yes.

Q. Dated September 30, 1938.

A. Yes.

Mr. Shuebruk: I offer Exhbiit 11, Mr. Examiner.

The Examiner: Any objections?

Mr. Fisher: No objection.

The Examiner: It may be admitted.

(Commission's Exhibit No. 11 was received in evidence.)

By Mr. Shuebruk:

Q. That would indicate, wouldn't it, Mr. Lafount, that there was a sale of the stock by Mr. Bulova to Mr. Cohen for $100?

A. Yes, sir.

Q. And did you testify that you had originally made the $100 available to buy in the stock, and Mr. Cohen had repaid you?

A. That's right.

Q. What was the arrangement as to the figure
200 $5,000 which Mr. Bulova had invested in the stock?

A. Mr. Cohen was to repay him for it, and did.

The Examiner: When that loan was advanced by Mr. Bulova, did you underwrite it?

The Witness: Yes, sir.

By Mr. Shuebruk:

Q. Then, what was the next transaction in the B stock, Mr. Lafount?

A. You want me to describe this?

Q. The next transaction was the purchase of Mr. Nordblom's 100 shares, represented by Certificate B-5?

A. Yes, sir.

Q. When did that take place?

A. May I refresh my memory by looking at this?

Q. Yes, sir.

A. April 23, 1937.

Q. That is the stub showing the original date of issue?

A. Oh, yes—I am sorry.

Q. Maybe I can refresh your recollection by referring to some proposals to sell the corporation in the fall of 1940 and the necessity of buying in the outstanding stock, consisting of 100 shares of A stock owned by Mr. Endlar, and the 100 shares of B stock owned by Mr. Nordblom?

A. That is right.

Q. There was a proposal at that time looking to-
201 wards the transfer of the corporation to new interests?

A. That's right.

Q. And in order to effectuate that transaction, it was necessary for you to be in a position to transfer all of the capital stock of the corporation?

A. That is correct, yes, sir.

Q. Accordingly, you made arrangements to purchase Mr. Endlar's 100 A shares?

A. That's right.

Q. And Mr. Nordblom's 100 B shares?

A. That's right.

Q. The only stock then outstanding.

A. Then outstanding.

Q. You paid Mr. Endlar $3100?

A. Yes, sir.

Q. For his 100 A shares, and Mr. Nordblom how much for his B?

A. $1500.

Q. And that was a payment by you.

A. That is right.

Q. In each case?

A. Yes, personal check. That is 1940. I have that check.

Q. Yes, you have showed that to us.

A. It was attached to the contract.

202 Q. The Certificate B-5 which Mr. Nordblom transferred at that time, bears a date of April 30, 1937, does it not, as of which he signed the certificate for transfer in blank?

A. Well, he signed the certificate. I don't know whether he signed it in blank. This is part of his blank.

Q. This part of his blank (indicating)?

A. And I do not know whether he signed it for transfer. It may have been security for a loan, and a lot of things. I don't know.

Q. Yes. It bears that date?

A. It bears the date.

Q. Of April, 1937, and the power of sale attached bears the date—attached on Certificate B-5, bears the date of October 1, 1937, does it not?

A. Yes, sir.

Q. Do you know why the variance in dates, namely, April 30, 1937, on the certificate, and October 1, 1937 on the power of sale, as distinguished from September 24, 1940, the date on which he transferred the stock?

A. No, I don't.

Q. To go back a moment, when Certificates B-1 and B-2 were transferred from Mr. Bulova to Mr. Sanford Cohen, September 30, 1938, there was issued to Mr. Cohen of the same date Certificates B-6 and B-7, each for 100 shares?

A. Yes, sir.

203 Q. So, from September 27, 1940, all the A stock and all the B stock were in the hands either of yourself or of the two Cohens?

A. Yes, sir.

Q. September?

Mr. Fisher: September, 1938?

Mr. Shuebruk: No, 1940.

Did I say 1938? September 1940.

By Mr. Shuebruk:

Q. Then, on May 14, 1943, the stock book shows two voided certificates, B-8 and B-9, B-8 for 300 shares—that is, the stub shows was issued to Sanford H. Cohen, and there is a transfer from Robert C. Nordblom. That would be Certificate B-3, wouldn't it, for the 300 shares?

A. That is right.

Q. And Certificate B-9, dated May 4, 1943, for 100 shares, to you, being a transfer from Robert C. Nordblom. That would be a transfer of Certificate B-5, the original certificate for 100 shares to Mr. Nordblom?

A. That is right. That was never executed. Those were not executed at all.

Q. If those had been issued, that would have given you 500 shares of B stock and Mr. Sanford Cohen 500 shares of B stock, wouldn't it?

A. Yes, sir.

204 Q. Why were those voided?

A. Well, particularly because it was my opinion that they should be issued that way. We had waited so long. I felt, well, I am perfectly willing to go ahead, risk whatever Mr. Nordblom or anyone else may do. I talked to Mr. Cohen and asked Mr. George Cohen if he would issue the certificates and he prepared them and then I talked to Mr. Sanford Cohen, and they advised me, and said that they themselves would not, positively would not proceed with this deal at all until we got a release from Mr. Nordblom. We were still having our troubles with Mrs. Whitwell. So, we were hearing frequently about her and her attorney who was visiting Washington, telling many stories about the ownership of the stock, and said, "We don't want to execute it until we get this whole thing and clean it up." All right, then, I did not sign it.

Q. Did this issue which was started or carried through on May 14, 1943, on Certificates B-8 and B-9 indicate the beneficial ownership of the B stock at that time?

A. No, sir. I had no ownership of it. I told them I would be perfectly willing to buy 100 shares of stock and clean the matter up, but we did not do it.

Q. From whom were you to buy that extra 100 shares?

A. Mr. Cohen.

Q. The stub shows, does it not, a transfer of the Certificate B-5 from Mr. Nordblom?

205 A. That is right—Mr. Nordblom.

Q. And you paid, did you not, Mr. Nordblom the $1500 for that stock in September, 1940?

A. Not this stub—oh, 1940? No, not this stub.

Q. Certificate B-5, didn't you?

A. This isn't from Certificate B-5, is it?

Q. Yes. I think, if you will look at the stub, this stub shows an issue of 100 shares to you on May 14, 1943, dated May 14, 1943, as the transfer from Certificate B-5.

A. Which was part of our original deal, original certificate.

Q. B-5 is the original certificate dated April 23, 1937, for 100 shares to Mr. Nordblom, which he sold to you on September 24, 1944, $1500.

A. That's right. We were still having trouble with Mr. Nordblom, and on this transaction, regardless of the other, Mr. Nordblom still told me, and I had no negotiations with Mr. Crockwell on that, but when we bought these 100 shares on this deal, Mr. Nordblom said to me, "I am dissatisfied with this deal. I don't want it to go through. I thought you were going to sell the station. My understanding was that you were going to sell all of the stock for $75,000." That was his understanding.

Q. Was the assertion of some claim by him a reason that these certificates were voided?

206 A. Partly, because we had made no adjustments with him.

Q. You will note that the bill of sale attached to Certificate B-5, which is dated October 1, 1937, has an erasure, does it not?

A. Yes, sir.

Q. Where George Cohen is put in as the transferee of the stock?

A. Yes, sir, that is right, in two places.

Q. Can you make out the name underneath?

A. I can make it out enough so that it could be "Lafount," I do not know whether it is.

Q. That is what it looks like.

A. It looks like it to me. I think actually, I am only assuming, but I think that was prepared in case the sale of the station went through, so it could be handled, and when I say the station, I mean the stock, of course.

Q. You paid $1500 for that 100 shares from Mr. Nordblom on—September, 1940? Were you ever paid anything for that?

A. Yes, sir.

Q. When was that?

A. Oh, almost immediately, very shortly afterwards.

Q. Who paid you the money?

A. Mr. Cohen.

Q. Which Mr. Cohen?

207 A. Mr. Sanford Cohen.

Q. Mr. Sanford Cohen?

A. Yes.

Q. How much did he pay?

A. $1500.

Q. $1500. Do you have your check books for that period?

A. When is this, sir?

Q. After September, 1940.

A. I haven't got them. Only beginning January 1, 1941.

Q. You did have the check, did you not, which you drew in September, 1940, to pay for the A stock and the B stock, which you paid at that time?

A. That was attached, sir, to the records, to convince the Cohens or to prove to them how much I paid. It was turned over to their office.

Q. Do you recall how much Sanford Cohen paid you for that stock?

A. $1500.

Q. Did he pay by check?

A. I am not sure of that. I think not. No, I recall he did not.

Q. How, by cash?

A. Yes, sir.

208 Q. The certificate was later issued, was it not, to George Cohen, that B-5 certificate?

A. That's right; that's right.

Q. And that was on what date?

A. November 9, 1943.

Q. November 9, 1943, there was an issue of 100 shares to George Cohen representing a transfer of the Certificate B-5 from Robert C. Nordblom, the stock which was purchased in September, 1940?

A. Yes.

Q. Then, we finally get down to November 27, 1943, which is the last transaction shown in the stock book, and Certificate B-3 had not yet been transferred out of Mr. Nordblom's name. It had been standing in his name since the closing on March 25, 1937?

A. Yes.

Q. And on November 27, 1943, it was transferred, was it not, 200 to Sanford Cohen, Certificate B-11, and 100 to George Cohen, Certificate B-12?

A. That's right.

Q. Both on the same day, November 27, 1943?

A. That's right, and may I say, as I think of it, on this $1500, I remember that cash transaction, but that may have been given directly, too, if it is important—I don't know that it is—to Mr. Bulova to apply on the other
209 loan.

Q. What other loan was that?

A. My loan. I am not sure whether I received the $1500. It was all done in the office, and I am of the opinion that that was probably handed right then, to Mr. Bulova.

Q. You mean on the loan at the time of the original purchase?

A. That's right.

Q. Well, this $1500 that you paid in September, 1940, for Certificate B-5 was a different purchase altogether?

A. A different purchase.

Q. So there was no reason for the payment of $1500 to Mr. Bulova?

A. I am not sure it was done in that office.

Q. I believe there is just one thing more, Mr. Lafount,

at this time. Certificate B-3 for 300, which is issued in Nordblom's name on April 23, 1937, shows on its back, does it not, where it has been signed by Mr. Nordblom for transfer, several erasures?

A. Yes, sir.

Q. It appears, does it not, that it was assigned to Sanford H. Cohen in the first place for 300 shares?

A. That's right.

Q. And that thereafter that was erased and Sanford Cohen was substituted for 200 and George Cohen for
210 100?

A. Correct.

Q. And the date has been changed. I don't think it is legible. Can you make it out?

A. No, sir, I cannot.

Q. There is some erasure, and the date that appears on the back of the certificate now is November 27, 1943?

A. Yes.

Mr. Shuebruk: This may be a good place to stop, Mr. Examiner.

The Examiner. All right, gentlemen, we will recess until 10 o'clock tomorrow morning.

(Whereupon, at 5:00 P. M., an adjournment was taken until 10:00 A. M., September 23, 1944.)

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* * * * *

215 HAROLD A. LAFOUNT, resumed the stand, and having been previously duly sworn, testified further as follows:

Cross examination (continued) by Mr. Shuebruk:

Q. Mr. Lafount, did your loan from Mr. Bulova by the station bear any interest?

A. No, sir.

Q. Did any of your transactions back and forth bear any interest?

A. No, sir.

Q. And did you say there was no evidence of any kind of this loan, no written evidence, memoranda, no?

A. I said that, yes, sir.

Q. Was this loan handled in the same way as the other items involved in your running account with Mr. Bulova?

A. No, sir.

216 The Examiner: Now, which item is this, Mr. Shuebruk?

Mr. Shuebruk: $52,500 loan with which Mr. Lafount bought stock in WORL in March.

The Examiner: I see. The entire amount?

Mr. Shuebruk: Yes, sir.

By Mr. Shuebruk:

Q. What was the difference in the way it was handled?

A. Well, the running account was between Mr. Bulova's interests and myself. The loan was definitely a loan made directly to me and was not consider at all his interests, was never intermingled with his interests except that if, in this running account, I had a credit, it was definitely a credit, it may have been transferred to Mr. Bulova and applied to this loan, but we frequently referred to it and considered it a loan and handled it as such, although we did not open any books, accordingly, for a loan that was between friends and something we had no difficulty in recalling.

Q. I gather from your testimony yesterday that the running account was not particularly active between you and Mr. Bulova. In other words, you did not finish paying up this $52,500 loan in March, 1937 until the end of 1943.

A. It was very active, but we did not actually strike any balance, or he and I discussed it until at that time.

Q. Well, what were the interim items concerned between March, 1937 and the end of 1943? Were there advances by you to him during that period?

217

A. Not to him, but to his interests.

Q. To his interests?

A. Yes, many, involving, I should think, one hundred, or two hundred and three hundred thousand dollars.

Q. To the radio station interested?

A. Yes, that is right.

Q. In most of the stations he is not the sole stockholder; is that not so?

A. Not the sole stockholder, no. He has been, for some time, the sole stockholder of most of these—that is, he and I.

Q. And you did not regard those advances through the radio stations as repayment on this $52,500 loan?

A. No, sir.

Q. So that was one credit Mr. Bulova had which remained outstanding during all this period, in spite of the flow of money back and forth in the account?

A. That is correct.

Q. Why was that left unsettled for that length of time?

A. He did not ask for the money, nothing was considered, or it was not considered so important that we hurried with the payments.

He did not seem to urge it at all. All at once, when he said, if you can give it to me, give me $20,000—

218

that cleaned it up and it was all right.

Q. And it did not bear any interest during this period?

A. No, sir; not any interest.

Q. I believe you testified yesterday that the last payment was $20,000.

A. That is correct; yes, sir.

Q. And I think I recall that you said it was paid by Atlantic Coast Network?

A. That is right.

Q. How was that handled?

A. Well, the Atlantic Coast Network owed me $30,000 or $35,000. I drew a check to Radio Station WNEW for $25,000 and paid up the obligation of his debt.

Q. Of Mr. Bulova's to WNEW?

A. Yes, sir.

Q. And they dicharged your obligation of $20,000 to Mr. Bulova, offsetting your claim against the Atlantic Coast Network?

A. That is right.

Q. Didn't you testify yesterday that Mr. Bulova owned the Atlantic Coast Network from 1940 on?

A. Yes, sir.

219 Q. Do you maintain any other checking accounts than in the Riggs Bank in Washington and the Chase National Bank?

A. Not checking accounts, no. I may have some other credits. For instance, I buy stocks sometimes, and forget, but I know at the present minute I have a credit on E. F. Hutton & Company of a few thousand dollars, probably five or six. It could be ten or twelve or fifteen, but I think it is five right now.

Q. Have you maintained checking accounts during the last seven years at any other place than those two banks?

A. Checking accounts? No.

Q. At the time of the purchase of the 700 "B" shares in March, 1937, you testified that it was arranged with Sanford Cohen that he and his brother would pay a proportionate share of the total purchase price.

A. Well, at the outset, I agreed in my agreement that I buy 400 shares for $48,000, and they were to buy 300 shares for $4,500, and they agreed to divide the costs of liquidating all of the obligations of the corporation.

Mr. Fisher: Your Honor, I don't want to interfere, but this was over twice before. This is the third time we have gone into it for some particular purpose. I haven't any objection.

The Examiner: Yes; it is in the record.

Mr. Shuebruk: I want to develop one additional
220 aspect of the thing, Mr. Examiner.

The Examiner: All right.

By Mr. Shuebruk:

Q. Well, that left the Cohens, at that time, assuming how much of the total purchase price?

A. I think about $12,000—no twenty—I am sorry—$22,500. That is what it was exactly, $22,500.

Q. You testified that that was arranged over the telephone, I believe?

A. I did not so testify.

Q. How was it arranged?

A. It was arranged over the telephone that they join in the purchase of some stock there, but I discussed that with them later, or I shouldn't have proceeded.

Q. Well, tell me how it was arranged with them.

A. When I returned to New York, which I think was on probably the 23rd or 24th, I discussed it with them then, with Mr. Sanford Cohen.

Q. Their purchasing the additional 300 shares?

A. That is right.

Q. And assuming a proportionate amount of the total purchase price of $52,500?

A. Assuming a proportionate amount of the total purchase price. The combined purchase prices, theirs and mine, was $52,000, and that was not one purchase
221 price, and it was not one transaction. It was two. I was representing them, but the total involved was $52,500.

Q. And at that time, before you returned to Boston for the closing, you had this arrangement with them, that they would pay the $22,500 and you would bear $30,000?

A. That is correct.

Q. Now later you purchased the "A" stock very cheaply, and you testified that that led to a reduction in the

amount that the Cohens were to pay from their original price of $22,500.

A. That is correct.

Q. What was the status of the payments at that time to Mr. Bulova? Had the amounts repaid Mr. Bulova at that time.

A. I don't know. That they could best tell you.

Q. Was this reduction with the Cohens arranged when you had purchased the 900 shares of the "A" stock in March of 1939, or was it at some other time?

A. It was adjusted—an adjustment was agreed to after the 900 shares were bought, but definitely decided after the other stock had been purchased, the other additional 100 shares.

Q. In September, 1940?

A. In September, 1940.

Q. That would place the final arrangement as to
222 the reductions sometime after September, 1940?

A. That is correct.

Q. And as a result of that reduction, did you pay the Cohens any money?

A. Pay the Cohens any money?

Q. Yes.

A. No, sir. I did not owe them any money.

Q. So as a result of this reduction, it wasn't necessary for you to reimburse them for any funds which they had bought up?

A. No, sir.

Q. And what was the final figure that it was agreed on that their $22,500 obligation should be reduced to?

A. I have to take a pencil and figure it up. I think it was about 12,000.

Q. About 12,000? Don't you know?

A. It was less, I think, than that. At this moment, I don't. I can figure it for you, but I really haven't it in my head. I think probably it was—let me see—my best recollection now is—I said twelve and spoke too hastily without

thinking. I think it was probably 7,100, 7,900. I don't know—somewhere along in there.

Q. And that left how much that you had to pay Mr. Bulova?

A. I am sorry, I don't know what you mean by
223 that.

Mr. Fisher: Your Honor—

The Witness (continuing): Deducting the first payment I had of the 12,000.

By Mr. Shuebruk:

Q. Including or excluding it?
A. May I know what you want me for?
Q. Well, give me the answer.
A. I have given it to you several times, sir.
Q. I would like to have it again.
A. O K.

Mr. Fisher: Your Honor, I don't know the purposes. We have been through it three or four times, OK, but let us not go through "this is what you said and that is what you said." That has been what each question has been today.

The Examiner: I assume counsel does not have the matter straight in his own mind, and for that reason presumes the record is not clear. I will permit him to pursue this matter a little further.

Mr. Fisher: All right.

The Witness: I had advanced to Mr. Bulova something like $1,200, a credit, and an amount paid by me to Sansont Realty Company of $7,100 or $7,200 or $7,300. There was, therefore, after an adjustment was made with the Cohens, a balance of twenty—about $30,000, $6,500 of which I paid in cash and $20,000 in money. That overpaid Mr.
224 Bulova about $1,800 or some such figure.

Q. And those figures that you have just given

represent the amounts within a few hundred dollars of the amount you repaid Mr. Bulova?

A. As I remember them now; yes, sir.

Q. You did not settle up with Mr. Bulova until the end of 1943?

A. Not in the sense of settling this loan.

Q. You testified yesterday that the reason the transfer of the 300 shares from Mr. Nordblom represented by certificate B-3 had not been reported to the Commission was the claims that had been asserted in connection with it. The stock had been paid for, had it not?

A. Yes, sir.

Q. And delivery of the certificate duly endorsed, the transfer made?

A. It had been made, but I was not sure whether the final payment had been made. We paid for it according to the agreement, but they claimed that there was still some misunderstandings and adjustments to be made. I insisted that there were not, but as long as there was a question and a continuing title, I certainly did not feel that the transaction was closed.

Q. You had no idea of giving up the stock, did you?

Mr. Fisher: Now, Your Honor, this has all been
225 gone over yesterday.

The Examiner: No, I don't think that question was asked.

Mr. Fisher: That one question wasn't asked, but they had bought 300 shares and got it in there before, yes.

The Examiner: That is true, but this question is pending and I am quite sure was not propounded. Read the question, Mr. Reporter.

(The last question posed by Mr. Shuebruk was read by the reporter, as follows):

"Q. You had no idea of giving up the stock, did you?"

The Witness: Giving it up?

By Mr. Shuebruk:

Q. The 300 shares.

A. Well, it all depends on what kind of a settlement was made. I may have had to give it up in taking the money back.

Q. What kind of claims were asserted against it?

A. No definite claims. As I explained also yesterday, these negotiations were wholly with Mr. Crockwell and Mr. Crockwell made every conceivable claim that he could conceive. He wanted to repurchase the station, wanted the contracts cancelled, he wanted to give me the money back. He wanted to do everything. He made frequent visits to this Commission and he talked to many
226 people—I don't know whom—or so he told me, and he was telephoning me from Washington, coming into New York and continuously explaining that this deal wasn't satisfactory, and he was always passing, if I may be permitted to say, passing the buck to Mr. Nordblom.

Q. Did he purport to represent Nordblom in these transactions?

A. He said the whole transaction was with him and therefore he was responsible to Mr. Nordblom.

Q. Mr. Nordblom signed the contracts, did he not?

A. Yes.

Q. Mr. Nordblom transferred the 400 shares of 500 that he owned?

A. Yes, sir.

Q. Mr. Nordblom was a man of business experience?

A. Very definitely.

Q. And you had good reason to believe Mr. Nordblom knew what he was doing when he sold the stock?

A. I should think he did.

Q. Did you bother to check with Mr. Nordblom about these representations with Crockwell?

A. I asked him a few times—well, I can not tell you just

ho wmany, but practically every time I saw him, I did not want to bring it up. I wanted to view it as a closed
227 transaction, if I could, but they wouldn't permit me.

Q. Was it brought up by you unofficially, either by you or Mr. Nordblom?

A. Yes, sir.

Q. When was that?

Mr. Fisher: Now, Your Honor, this has all been gone over yesterday.

The Examiner: I don't recall the details of this.

Mr. Fisher: I do, took it up with Mr. Nordblom at various times.

The Examiner: Yes, but this question requests the details of the conversations, if any, had between the witness and Mr. Nordblom.

I will let him answer and give you an exception.

The Witness: I asked Mr. Nordblom, upon different occasions, whether or not he had adjusted all of his differences yet with Mr. Crockwell, and if he was satisfied with the transaction, and he said no.

By Mr. Shuebruk:

Q. When was that?

A. Oh, I couldn't tell you, sir, the exact dates.

Q. Approximately?

A. Approximately 1938.

Q. Was that the first time that you discussed the matter with him?

228 A. No, sir.

Q. When were some other times?

A. 1937, 1938, 1939, 1940, 1941, 1942 and 1943.

Q. What was the nature of those discussions?

A. Simply that I asked him if he had yet adjusted his troubles with Mr. Crockwell and if he was satisfied, to which he said no.

Q. What were his troubles with Mr. Crockwell?

A. That I don't know.

Q. Did Mr. Nordblum ever ask for any money from him?

A. No, he was trying to adjust it through Mr. Crockwell.

Q. Did he ever assert any kind of a claim against you?

A. Ever? Not to me. I think he did to Mr. Davison.

Q. When was that?

A. Oh, I think that was—oh, I can not tell you exactly. I recall that there were some things and amounts discussed, but I should say they were in 1942.

Q. You do not know what the nature of the difficulties between Mr. Crockwell and Mr. Nordblom was?

A. No, I do not. Mr. Crockwell told me that he thought if I could arrange the loan of $5,000 with Mr. Bulova, that he would, with that money, be probably able to adjust them all, and that was one of the inducements for helping him get the money.

Q. His trouble with Mr. Nordblom?

229 A. That is correct.

Q. Why did you regard the 300 shares of "B" stock as affected by these troubles between Nordblom and Crockwell?

A. Because that was the only stock that had not been reported to the Commission and actually transferred, physically transferred.

Q. But that report to the Commission had no bearing upon the rights of any particular party to that stock?

A. Not any, not any.

Q. Well, why does the report to the Commission enter into it at all?

Q. You asked me why the other stock was not included. The other stock which I purchased was mostly Eynon and Phelan, or whatever their names were.

Q. No, I asked you why the 300 shares, represented by certificate B-3, was regarded as in any way involved in the claims or dealings between Nordblom and Crockwell.

A. That I can not tell you. That was an agreement or

an understanding or a misunderstanding between those two men.

Q. Mr. Nordblom never asked you for any specific amount of money or made any claim concerning the stock then?

A. No, sir.

Mr. Fisher: That was asked yesterday, Your Honor, and there was finally a $750 payment that the record shows.

The Examiner: That was for the same, the remaining.

230 Mr. Fisher: No, that was the settlement of all of it, the letter shows—Exhibit 1.

The Examiner: Yes, I believe that is in the record.

Mr. Shuebruk: Exhibit 1 is in, or 8, or 9?

Mr. Fisher: 1, the very first one was the receipt from Nordblom in full settlement of everything, '43.

By Mr. Shuebruk:

Q. You knew, then, that Mr. Nordblom, or you say you knew that Mr. Nordblom was dissatisfied with the transfer of the stock very early after the closing?

Mr. Fisher: Now, Your Honor, I must make an objection. If we are going over all this testimony this morning that we went over yesterday all day long, I am going to oppose it, and that is certainly the same question he asked yesterday. Are we going all over it today because it is another day?

The Examiner: I think that question was asked.

Mr. Shuebruk: I am soon passing to something else, Mr. Examiner.

The Examiner: Beg your pardon?

Mr. Shuebruk: I am soon passing to something else, Mr. Examiner. I just want to lay a certain introduction.

The Examiner: All right. Try to refrain from going over the same grounds. I will let him answer this question. What was the question?

231 (Whereupon, the last question posed by Mr. Shuebruk was read by the reporter, as follows:)

"Q. You knew, then, that Mr. Nordblom, or you say you knew that Mr. Nordblom was dissatisfied with the transfer of the stock very early after the closing?"

The Witness: Through Mr. Crockwell, yes.

By Mr. Shuebruk:

Q. But Mr. Nordblom never directly—

Mr. Fisher: Now, we object, Your Honor.

Q. (Continuing) —made that dissatisfaction known to you?

A. Not up to that time, no, sir.

Q. And when was the first time that he did?

A. I explained this morning.

Mr. Fisher: I object, Your Honor. He explained again this morning. He said every year after that.

The Witness: I can not give you the exact dates, sir.

The Examiner: I think that was answered. Try to refrain from encumbering the record.

By Mr. Shuebruk:

Q. Mr. Lafount, do you recall writing a letter to Mr. Nordblom stating "I was surprised to learn that you were not perfectly satisfied with your stock transaction involving your interest in WORL. I can quite understand your feel-

ings. I sometimes sell at the wrong time. When I
232 find the price is increased, I too feel like kicking
myself. However, I do not think this should apply
in your case."

A. Yes.

Q. Do you recall when that was?

A. No, sir. I know it was some time later, but I do not know just when it was.

Q. Was it as early as 1937 or 1938?

A. I think so.

Q. If I should tell you it was in May of 1943, would that refresh your recollection?

A. Is this a letter now to Mr. Nordblom? I am sorry. I thought you said Mr. Crockwell. Did you say Nordblom?

Q. Yes, sir.

A. That doesn't refresh my recollection. I recall it very well, sir. That is applying to the sale of the hundred shares, of which he was also dissatisfied, and that had no bearing on the 300 shares at all.

Q. He had, in connection with the hundred shares, filed a claim against you or made some kind of a claim against you?

A. Yes, sir. That was not through Mr. Crockwell. That was directly through Nordblom. In that case Mr. Nordblom said he was extremely dissatisfied with the whole transaction, that he had been led to believe that the station or all of
the stock was to be sold, and for that reason he
233 agreed to sell his.

Q. And that was the sale of the hundred shares in September, 1940?

A. Yes, sir.

Q. In this case Mr. Nordblom did write you directly concerning his dissatisfaction?

A. Because that was a transaction between him and me, sir. The previous transaction was between Mr. Crockwell and me, and this was between him and me direct, or through his lawyer.

Q. The previous transaction is sale of 400 shares and was direct through you, too, was it not?

A. No, sir, I never did negotiate with him.

Q. You signed a contract with him?

A. Oh, yes, indeed, but that doesn't indicate that the negotiations leading up to the signing of the contract were with him.

Q. And under the contract it was specified how much Mr. Nordblom was to receive, under the contract which you signed with him?

A. That is correct; yes, sir.

Q. And similarly under the contract between Mr. Fisher and Mr. Nordblom?

A. That is correct, sir, and I was satisfied with the contract as it was executed, perfectly willing at all times,
234 ready and willing and anxious to proceed. Why they were not I don't know.

Q. There is no other written evidence of any claim by Mr. Nordblom than the one in connection with the hundred shares of stock that was purchased by you in September, 1940?

A. That I haven't been able to find. I have searched for it and my files are not very complete, unfortunately. The records were put with my present records.

Q. I have asked you, have I not, to produce any correspondence you may have had with Mr. Nordblom?

A. Yes, sir; and I have made a real effort to get everything to you that I could.

Q. And no such other claim by Mr. Nordblom was found?

A. Hasn't been found yet; no, sir.

Q. Do you recall about the time that Mr. Nordblom asserted the claim on the hundred shares of stock?

A. You just gave it to me, and I should remember it, but I am sorry, I don't. I think you said 1942 or 1943.

Q. 1943, yes.

(A document was marked Commission's Exhibit No. 12 for Identification.)

By Mr. Shuebruk:

Q. I show you Commission's Exhibit marked No. 12 for Identification, and ask you whether you received that
235 letter from Mr. Nordblom?

A. Yes, sir.

Q. Will you read it, if it is necessary to refresh your recollection on it?

A. I have done so, just now, hurriedly.

Q. He was talking there in this letter of May 1, 1943, to you concerning the hundred shares of stock in September, 1940?

Mr. Fisher: Now, we object to that question. The letter speaks for itself and the letter refers to all of the transactions, Your Honor—refers to the entire transaction being a disappointment. It is treated the same as other stockholders. That could only be the entire transaction.

The Examiner: What was the question to which objection was made, Mr. Reporter?

(Whereupon, the last question posed by Mr. Shuebruk was read by the reporter, as follows:)

"Q. He was talking there in this letter of May 1, 1943, to you concerning the hundred shares of stock in September, 1940?"

The Examiner: Well, the letter, Exhibit No. 12, does not disclose clearly what stock he is talking about. I think the question is a proper one. I will permit him to answer.

The Witness: What is your question?

(Whereupon, the question was again read by the reporter.)

236 The Witness: Certainly he was referring to that in shares.

By Mr. Shuebruk:

Q. To any other?

A. I don't know that.

Q. What is your understanding at the time that you received the letter?

A. I can't quite tell you just what I did think of it, what my understanding was.

Q. Had Mr. Nordblom ever sold any stock through Mr. Davison to you, other than the 100 shares of the B stock which he sold you in September, 1940?

A. Through Mr. Davison? No, I think not.

Q. And was there any other occasion when stock was purchased from Mr. Nordblom at the time that a possible sale of the station was in contemplation?

A. No, I think not.

Q. Pardon me. There is no doubt that what he is referring to in his letter is the September, 1940 sale of the 100 shares of "B" stock.

A. He certainly was referring to that. Whether he had anything else in his mind, that I can not tell you.

Q. The letter gives no other indication of him having anything else in his mind?

A. Well, it could be so construed.

237 Mr. Shuebruk: I offer Commission's Exhibit 12.

The Examiner: Objection?

Mr. Fisher: No objection.

The Examiner: Admitted.

(Commission's Exhibit No. 12 was received in evidence.)

(A document was marked Commission's Exhibit No. 13 for Identification.)

By Mr. Shuebruk:

Q. I show you Commission's Exhibit 13, Mr. Lafount, marked for identification. Is that your reply of May 11, 1943, to Mr. Nordblom?

A. I don't know, sir. May I read it?

Mr. Shuebruk: Certainly.

(Witness reads Commission's Exhibit No. 13 for Identification.)

The Witness: Yes, sir; I think that was my answer.

Mr. Fisher: No objection.

The Examiner: Offer it.

Mr. Shuebruk: You anticipate me. Yes, I offer it.

The Examiner: Admitted.

(Commission's Exhibit No. 13 was received in evidence.)

By Mr. Shuebruk:

Q. You will note the second paragraph, Mr. Lafount. Does that not indicate that you were surprised to find that Mr. Nordblom was dissatisfied with his sale of stock
238 to you?

A. Yes, sir.

Q. And it does not indicate that the matter had been under discussion for six years?

A. I should say that referred to the sale of the 100 shares.

Q. Then considerable time passed, did it not, before anything else was done in connection with taking care of Mr. Nordblom's claim?

A. Yes, sir.

Q. How was the transaction finally closed? How did it come about?

A. I recall that very distinctly, because it hasn't been too long ago.

I telephoned to Mr. Davison and told him that the Lea Committee, as it is now known, was investigating. I had heard some talk of it and I should have Mr. Nordblom, likely, either make an adjustment or something on an item that had been left for a long time, and I would like to clean up the matter, and he immediately got in touch with Mr. Nordblom and phoned and told me that he would adjust it for that amount of money. He asked me and Mr. Davison told me that he thought it could be adjusted, I think, for $3,000, and then, I finally paid him $750.

Q. And after your call to Mr. Davison, the matter was settled within a few days?

239 A. That is correct.

Q. Applicant's Exhibit 1 is the final acknowledgment released by Mr. Nordblom?

A. That is correct.

Q. Was there any correspondence prior to that time between you and Mr. Nordblom in connection with making this final settlement?

A. Correspondence in connection with the final settlement? I believe not, sir. My best recollection is that there was none.

Q. Was there any between Mr. Nordblom and anybody else, Mr. Davison or Mr. Cohen?

A. I am sorry, I did not know that.

Q. We have asked you, have we not, Mr. Lafount, to produce all the correspondence that you have had with Mr. Nordblom?

A. I don't know whether it said all of the correspondence, but if it did I certainly produced everything you asked for that I had.

Mr. Fisher: Ask Mr. Fisher.

Mr. Shuebruk: By agreement with Mr. Fisher, I offer as Commission's Exhibit 14 a letter from Mr. Davison to Mr. Nordblom dated November 24, 1943.

The Examiner: Any objections?

Mr. Fisher: Well, Your Honor, I have no ob-
240 jection to the signature, you understand. As to its relevancy, I don't see the relevancy of it. It might be Mr. Davison's understanding to Mr. Nordblom, but certainly that doesn't bind Mr. Lafount in any way. It has no relevancy and we object to the issue.

The Examiner: Does this relate to Applicant's Exhibit No. 1?

Mr. Shuebruk: Yes, it was correspondence prior to the execution of Applicant's Exhibit No. 1.

The Examiner: I see, but it does relate to that transaction.

Mr. Fisher: And it is between Mr. Davison and Mr. Nordblom, with which Mr. Lefount hasn't any connection.

By Mr. Shuebruk:

Q. Mr. Davison was acting for you in this transaction, was he not, Mr. Lafount?

A. Acting for both of us.

Q. You called him and asked him to see if he couldn't get Mr. Nordblom to settle the thing finally and he did that for you?

A. He did, and he prepared the release.

The Examiner: He was acting for agent of each of you?

The Witness: Yes, sir.

The Examiner: All right. I will admit the document in evidence.

241 (The document was marked Commission's Exhibit No. 14 and received in evidence.)

(A document was marked Commission's Exhibit No. 15 for Identification.)

By Mr. Shuebruk:

Q. I show you Commission's Exhibit 15 marked for Identification, Mr. Lafount, and ask you whether you received that letter?

A. I don't recall it. I could have done so, but I really don't recall it. Is it in the files that we have turned over to you?

Q. No, it was not. I obtained this copy from Mr. Nordblom.

A. I don't recall. I likely did receive it.

Q. If there is any question about the receipt of the letter, of course, I shall be glad to call Mr. Nordblom from Boston.

Mr. Fisher: I say, I agree that matters of that kind for signature and the like would be useless, and I have no objection to it being admitted.

The Examiner: All right.

Mr. Shuebruk: I offer it in evidence.

The Examiner: Exhibit No. 15 is admitted.

(Commission's Exhibit No. 15 was received in evidence.)

By Mr. Shuebruk:

242 Q. Will you read the first paragraph of that letter, Mr. Lafount?

A. Yes, sir: I have.

Q. Will you read it into the record, please?

A. "I acknowledge receipt from you of the sum of $750 with the $1,500 previously paid by you in full payment for 100 shares of class 'B' stock of Broadcasting Service, Inc."

Q. I think you made a slight mistake. You stated, "previously paid me in full payment for 100 shares." I think you said just now, "previously paid by you."

A. Yes.

Q. Did you send Mr. Nordblam any release or acknowledgment as part of this transaction, in addition to your check for $750?

A. I think I did.

Q. But that letter was not found when you searched the files?

Mr. Fisher: We haven't it. We couldn't find it.

By Mr. Shuebruk:

Q. But you do recall that?

A. I think I do. That is my best recollection at this time. I think I did.

(A document was marked Commission's Exhibit No. 16 for Identification.)

243 *By Mr. Shuebruk:*

Q. I show you Commission's Exhibit 16 for Identification, Mr. Lafount, and ask you if that is a letter you sent Mr. Nordblom?

(The witness reads Exhibit No. 16.)

A. Yes, I think I sent that.

Mr. Shuebruk: I offer Commission's Exhibit No. 16.

Mr. Fisher: No objection.

The Examiner: Admitted.

(Commission's Exhibit No. 16 was received in evidence.)

By Mr. Shuebruk:

Q. You will note Commission's Exhibits 14, 15 and 16 are all dated the same day, November 24, 1943. Was this transaction handled completely by mail?

A. And telephone.

Q. You did not go to Boston or Mr. Nordblom did not come to New York?

A. No, sir; that is correct.

Q. If you look at the last letter, November 24, from you to Mr. Nordblom, Commission's Exhibit 16—

A. Yes, sir.

Q. (Continuing)—you recognize in that letter the full validity of the March 16, 1937 contract, do you not?

A. Yes, sir.

Q. And likewise the letter recognizes it is the
244 sale of 100 shares of stock and not the additional 300 shares which was the matter under dispute.

A. This refers to the fact that the thing was done.

Mr. Fisher: The first part of it.

Mr. Marks: Just a minute, Mr. Fisher, let him testify.

Mr. Fisher: All right. I object to the answer in his mouth. The letter speaks for itself.

The Examiner: Do you have an objection? You can lodge it, and I will rule on it.

Mr. Fisher: I object to the question.

The Examiner: What was the question?

(The question referred to was read by the reporter.)

The Examiner: You object to that question, Mr. Fisher?

Mr. Fisher: Yes.

The Examiner: On what grounds?

Mr. Fisher: On the ground that the letter speaks for itself.

The Examiner: Sustained.

Mr. Marks: He sustained his objection.

By Mr. Shuebruk:

Q. Prior to the release of November 27, 1943, from Mr. Nordblom to you, Mr. Lafount, can you point out to me in the correspondence any indication that anything other than the 100 shares of B stock sale on September 24, 1940, was involved in this claim he had asserted?

245 Mr. Fisher: Well, now, your Honor, I make the same objection. Can he point out? The correspondence is all before the Commission for their interpretation, and again it speaks for itself.

The Examiner: The witness has one of these letters, and they all relate to the transactions in which he was involved. I will let him answer that.

Mr. Shuebruk: I am perfectly happy to let the letter speak for itself, but Mr. Lafount has testified it is the whole 400 shares that was sold by Mr. Nordblom that was in dispute, and I was asking him to show something in the correspondence to support that.

The Examiner: You may answer that.

Mr. Shuebruk: I am giving him an opportunity to contribute something to the record.

Mr. Fisher: I haven't any objection to that, but, as I say, the correspondence and the release speak for themselves.

The Examiner: All right, Mr. Lafount, you may answer.

The Witness: As I have previously explained, the 400 shares of the—

Mr. Shuebruk: Read the question again, Mr. Reporter.

(The question referred to was re-read by the reporter.)

The Witness: My answer is no, not in the correspondence, but my explanation to the answer is—

and I would like to refer again to what I have testi-
246 fied to so many times—that my problems were with Mr. Crockwell, who was not getting along with Mr. Nordblom. It was not Nordblom and I, but Mr. Crockwell and Mr. Nordblom. Mr. Nordblom was the man I was having my troubles with.

The Examiner: All right, proceed.

By Mr. Shuebruk:

Q. In the same way, you considered the 300 shares of B stock which Nordblom had told you to be involved in the difficulties between Mr. Nordblom and Mr. Crockwell?

A. In the same ways?

Q. Yes.

A. In the first place, he did not sell it to me. I handled all of it. Even this letter refers to my having bought the 100 shares. He did not do that. I should have negotiated it, but I was doing it with Mr. Cohen, and that has been referred to as "I," but, as a matter of fact, I should be more cautious, and I should say, I, in behalf of others.

Q. You paid $750?

A. I did, yes, sir.

Q. For this settlement?

A. Yes.

Q. Has anyone repaid you for that?

A. Yes, sir.

Q. How much?

A. $750.

247 Q. Who paid it?

A. Mr. Cohen.

Q. Which Cohen?

A. Mr. Sanford Cohen.

Q. How soon after the settlement on November 24, 1942, was that?

A. Oh, I think it was in December or January. I don't recall. Not promptly afterwards.

Q. Was it by check?

A. No, sir.

Q. By cash?

A. That is right.

Q. You handled the transaction with Mr. Nordblom, however?

A. I did.

Q. Through Mr. Davison?

A. That is right.

Q. You agreed to the $750 figure?

A. After discussing it with Mr. Cohen.

Q. The applicant's Exhibit 1, which is the release of November 27, 1943, from Mr. Nordblom to you—wasn't that sort of an afterthought after the release of acknowledgments on November 24 had been exchanged?

A. An afterthought.

Q. Yes.

248 A. To get a release, you mean?

Q. To get that additional release of broader scope than the earlier release of November 24.

A. I think we had two or three proposals on a release that my attorney, Mr. Cohen, or in behalf of himself, or Mr. Davison, acting for Mr. Nordblom, discussed and wanted definitely worked out satisfactorily to all concerned.

Q. The release runs to you, does it not?

A. Yes, sir.

Q. The release of November 27, 1943, Applicant's Exhibit 1?

A. That is right.

Q. Why should it run to you if the two Cohens were the purchasers of the stock?

A. Because I did all the negotiations. Everything was done by me.

Q. As a matter of fact, the 300 shares involved were delivered under a contract made between Mr. Fisher and Mr. Nordblom, were they not?

A. Yes, sir, but that did not stay in existence, as I recall it, very long. I don't even know that it is out of existence now, but my recollection is that I requested Mr. Fisher to do that for the Cohens at that time.

Q. Did George Cohen pay you any part of the $750?

A. No, sir, I received the money from Mr. Sanford
249 Cohen. Their arrangements would have to be between themselves.

Q. What do you regard the control of the corporation consists of, Mr. Lafount?

Mr. Fisher: Your Honor, I haven't any objection to his answering it, but I think that is a legal conclusion.

The Examiner: Yes, involves a question of law, but I think this witness, having been engaged in the broadcasting business for many years, and having been a member of the Federal Radio Commission, may give his opinion.

Mr. Fisher: All right, no objection.

The Examiner: Of course, it will not be binding on the Commission, but it might be enlightening as to what this witness considers to be controlling. You may answer.

The Witness: Possession of more than 50 per cent of the outstanding voting stock by any one individual.

By Mr. Shuebruk:

Q. That is the sole element in your mind in control?

A. Sole element? I am sorry. Could you suggest another?

Q. Would the management of the company, the authority to hire and fire, generally to run the business, be regarded as control by you?

A. No, sir.

Q. It would not?

A. No, sir.

250 Q. In other words, you make stock ownership the sole criterion of control of a corporation?

A. Yes, sir; yes, sir.

Q. Does that have to be by a single individual?

A. If it is a control.

Q. What about two or three or more people who are closely associated and act together?

A. If they are alike, I and my associates, we have very definite misunderstandings or different understandings and understandings on many problems, and I think that that would simply not indicate control or represent control in any way. Twin brothers disagree.

Q. At the time of the purchase of the stock on March 27, the majority of the stock did change hands, did it not? The majority of the voting shares?

A. I think now that we are coming back to the same question. I am glad to reiterate. They did not. The holding of a stock certificate, which is endorsed, does not necessarily transfer the ownership of the certificate. We had a contract which, if complete, would have completed the transaction, but the transaction was not, in the opinion of Mr. Cohen and his brother—

The Examiner: Just a minute, just a minute! Do not state the opinion of Mr. Cohen. You may state your opinion, but not Mr. Cohen's.

251 The Witness: O. K. I am sorry.

The Examiner: He is here and can speak for himself.

The Witness: I am quite sure. I am in the middle of a sentence, I think.

The Examiner: Read the answer, Mr. Reporter.

(The answer referred to was thereupon read by the reporter.)

The Witness: If you want to strike out Mr. Cohen and his brother and let me correct my statement, it was in my opinion.

The Examiner: Yes.

By Mr. Shuebruk:

Q. It was solely in your control as to whether or not that certificate should be transferred? It was delivered to you and endorsed in blank and you could have had a certificate issued at any time?

A. In my control? Personally, do you mean, sir?

Q. Well, whatever you choose to answer.

A. Well, I would like to understand the question.

The Examiner: Read the question.

(The question referred to was thereupon read by the reporter.)

The Witness: And I still don't know how I could have had a certificate issued myself. It requires more than my signature.

The Examiner: Mr. Lafount, the question is clear and you can answer yes or no or in any way you want.

252 The Witness: I shall have to answer it no.

The Examiner: Let that be your answer.

By Mr. Shuebruk:

Q. What prevented the issuance of a new certificate to replace the old certificate issued in Mr. Nordblom's name and endorsed, a transfer by him?

A. The fact that the parties I had purchased the stock for objected to taking it as long as there was any question as to its title.

Q. You mean they refused to have the stock transferred to him?

A. They did, and I thought it was likewise unwise.

Q. The stock still remained—the certificate still remained in your possession, however?

A. I am sure it remained with Mr. Cohen.

Q. It was your money that had paid for the stock?

A. Technically, it was Mr. Bulova's, perhaps.

Q. Well, you testified that you had borrowed it from him and were under obligations to him?

A. Yes, sir, that is the understanding.

Q. Suppose the stock had had to be returned? Who would have stood the loss?

A. The stock had had to be returned.

Q. The B-3 certificates, 300 shares?

A. That would have been a matter we should have had to have adjusted between ourselves.

Q. Between whom?

A. Between Mr. Cohen. I purchased it definitely for him.

Q. Six years is a pretty long time for the certificate to have remained in that state of suspense, don't you think?

A. Yes, sir, I do. I regret it very, very much. I don't know why he couldn't have adjusted it sooner, but time kept rolling on, and why, I really don't know. One condition after another existed. The records will show we had Mrs. Whitwell some years claiming something against the station, and it has been an upheaval ever since I purchased it, until today.

Q. Mrs. Whitwell's claim was not made against you, was it, until June of 1941?

A. Yes, sir. It was made in 1939.

Q. Before that there was no reason—in 1939, all you had was a letter from Mr. Crockwell that Mr. Hines, an attorney for Mrs. Whitwell, was looking into the matter?

A. Before that my attorney told me—I don't recall how much prior to that date, but certainly before that date I had been advised by Mr. Davison that there was an attorney looking into the matter.

The Examiner: Recess for five minutes.

(Whereupon, a short recess was taken.)

The Examiner: All right, gentlemen, we can proceed.

254 *By Mr. Shuebruk:*

Q. When you first learned of the Whitwell claim in 1939, I think you said, did you refer it to your attorneys?

A. Yes, sir.

Q. And what was their advice?

A. They said that in their opinion she had no claim.

Q. So that on the basis of that advice, there was nothing in the Whitwell claim to cause you much concern?

A. I am sorry, sir, there were suits filed against the corporation, claims made, and they filed with this Commission those claims, and there was a good deal to give me concern. My attorneys said that was their opinion, but a lawsuit is always a lawsuit. No one can predict the outcome.

Q. That was a lawsuit against the corporation?

A. That is correct.

Q. Not against you as an individual?

A. I am not sure whether I was included in that suit or not. I think the records are here and will speak for themselves.

Mr. Shuebruk: Is there any question, Mr. Fisher, that the suit was against the corporation?

Mr. Fisher: I think the suit was against the corporation, your Honor.

The Witness: There were a few suits, Mr. Fisher, some of them dismissed and some not.

Mr. Fisher: One was adjudicated, I think, against
255 the corporation.

By Mr. Shuebruk:

Q. The other suits were against other parties not connected with you, you or the association, various banks in Boston?

Q. Yes, but I mean other suits that involved me or the corporation too. I think three suits.

Q. Will you check your records on that and make them available?

A. I think that there is here in the room a letter from Mr. Davison that gives a complete history of it, and I think the letter was written to Mr. Fisher. I do not know whether he has a copy of it here.

Mr. Fisher: I may. I will see. Go ahead.

By Mr. Shuebruk:

Q. In any case, the suits did not involve the 300 shares which Nordblom had transferred, did they?

A. I think they involved all of the stock, sir.

Q. Did not the suit that went to trial involve only some claims for loans which stood on the books of the corporation in Crockwell's name in which Mrs. Whitwell's claim was really an advance of money by her?

A. That is not possible, but not my understanding.

Mr. Shuebruk: We will wait until Mr. Fisher has that letter.

Mr. Fisher: As to those other suits.

256 Mr. Shuebruk: Which explains the suits.

By Mr. Shuebruk:

Q. In addition to the sale of the 700 shares, sale and purchase of the 700 shares in March 25, yesterday you testified that the old stocks went out and new people came into the corporation. Do you recall Mr. Sanford Cohen's testimony before the Select Committee?

A. I think I did not hear it.

Mr. Fisher: Mr. Cohen will be on next.

Mr. Shuebruk: Yes, I know he will.

I am reading from the hearings of the Committee conducted pursuant to House Resolution 21, page 2273 of the hearings. This is Mr. Cohen's testimony under oath.

Mr. Fisher: Now, your Honor, Mr. Cohen will be here and can identify that. Mr. Lafount said he wasn't present, and we object to it being read into the record.

The Examiner: I think the witness testified that he did not hear the testimony.

Mr. Shuebruk: I want to ask him if he agreed with it.

Mr. Fisher: I object to that—as to whether or not he agrees with somebody else's testimony. Wait until we get the testimony.

The Examiner: Yes, this witness will be subject to recall after the witness is examined. I think it is out of order at this stage of the game.

257 Mr. Shuebruk: This testimony, Mr. Examiner, concerns the understanding which Mr. Cohen had at the time of the purchase of the stock in March, 1937. Mr. Lafount has testified that he and the Cohens were associated in the purchase.

The Examiner: Yes. Mr. Cohen will be on the stand, and if you think it is material, you can recall this witness after Mr. Cohen has testified.

By Mr. Shuebruk:

Q. Have the two Cohens ever received any salary from the corporation?

A. No, sir.

Q. And you have received, since the transfer of the stock in March, 1937, a salary?

A. Yes, sir.

Q. Ranging from $4,000 to $10,000?
A. That is correct.
Q. Per year?
A. Yes, sir.

The Examiner: Can you estimate the total amount of salary that you have drawn from this corporation since you have been a stockholder?

The Witness: I may have a memorandum in my pocket that will refresh my memory, if you desire.

The Examiner: You may make a search, if you so desire.

The Witness: I am not quite certain, but I think
258 I have that here. I would like to look.

(The witness searches through his papers.)

The Witness: Yes, I have $40,000.

The Examiner: During that same period of time, what dividends, if any, have been paid on the stock?

The Witness: Not any, no dividends have ever been paid, sir, or interest on the preferred stock.

The Examiner: All right. Proceed.

By Mr. Shuebruk:

Q. Mr. Lafount, how many times had you met Mr. Crockwell up until the first of May, 1937?

A. March, April, May. I should think about a dozen.

Q. And at how many of those interviews had he raised the problem of wanting to purchase the stock back or buy the station back, or raised the question that Mr. Nordblom was dissatisfied?

Mr. Fisher: Now, your Honor, we went all over that yesterday and again this morning. Now, just a minute, I object to further questioning on that.

The Examiner: I don't recall that particular question being propounded.

Mr. Fisher: Well, how many times between certain dates, yes. Are we going to get down to how many times each month, and so forth? The whole general problem has been gone into for some specific purpose. If he won't take long, I have no objection. jection.

The Examiner: No objection.

The Witness: I think I am not following the attorney.

The Examiner: What was that first question, Mr. Reporter?

(The question referred to was read by the reporter.)

The Witness: That is what I was answering, twelve.

By Mr. Shuebruk:

Q. That is right.

A. And some of those were before March 25, some before March 15, and, of course, at those times we couldn't discuss something that did not happen.

Q. How many times was it between March 25, then, and May 1?

A. I think only two or three times.

The Examiner: May 1 of what year?

Mr. Fisher: 1937.

The Examiner: May 1, 1937.

Mr. Fisher: Right.

By Mr. Shuebruk:

Q. I show you some original Commission documents, Mr. Lafount, Document No. 4206, involving an application for night time operation by Broadcasting Service Organization, Inc.

A. Yes, sir.

Q. The hearing being held in that proceeding on May 3, 1937. You refer to your testimony beginning on
260 page 54 in that proceeding, in the transcript of that proceeding. The question was asked you, page 60—

The Examiner: Page what?

By Mr. Shuebruk:

Q. Page 60 of the transcript:

"How long have you been in this Broadcasting Service Organization?

"A. Just since last March.

"Q. Since March, 1937?

"A. Yes, sir.

"Q. And you have only met Mr. Crockwell twice? He does not exercise any control over the policies of the station?

"A. No, sir.

"Q. Who is Mr. Nordblom?

"A. He is in the real estate and building and operating business, operating, more or less, and developing real estate properties in Boston.

"Q. Does he exercise any control over the policies of the station?

"A. Only as a director.

"Q. And since March there have only been two directors' meetings, or have there been more?

"A. I think three.

"Q. Who do you say, of all the owners of the stock, is the one who is most intimately connected with the
261 affairs of the station? Would that be you?

"A. At the present moment, yes, sir."

Do you recall that testimony, Mr. Lafount?

A. Yes, sir, I am quite sure that that is my testimony.

Q. And does that reflect the true condition of affairs at that time?

A. Yes, sir.

Q. Is there any question in your mind, Mr. Lafount, that you voted the 300 shares transferred by Mr. Nordblom by Certificate B-3 during the interim before it was transferred into the Cohen's name?

A. If I did, it would be my proxy. I may have voted all of the stock. I don't know. The records themselves speak for that, the directors' and stockholders'.

Q. Proxies from whom?

A. The records themselves would have to be referred to. I couldn't recall each directors' meeting and the proxies that I held, sir. I know I voted them.

Mr. Fisher: What year are you referring to?

The Witness: I used some proxies in voting.

Mr. Shuebruk: From 1937 to November, 1943.

Mr. Fisher: You read into the record that up to 1942 Mr. Nordblom voted that stock at all those annual meetings.

Mr. Shuebruk: On the contrary.

Mr. Fisher: The minutes show that. I asked you
262 that very question.

Mr. Shuebruk: The record book shows, I believe, that he was reported as having 400 shares. It does not indicate who voted that stock.

Mr. Fisher: I see what you mean.

By Mr. Shuebruk:

Q. If you recall your testimony before the Select Committee you did vote that stock?

A. By proxy, when he was not there.

Q. When who was not there?

A. If it was that 300 shares.

Q. That 300 shares, yes, sir. When who was not there?

A. Mr. Nordblom, or its owners. I don't recall now what you mean. I don't know which meeting to which you refer.

Mr. Fisher: As I say, Mr. Shuebruk, take this. For instance, this is 1939, when Mr. Nordblom was present and voted the 300 shares.

Mr. Shuebruk: It does not say he voted them.

Mr. Fisher: Yes. "The following stockholders representing the number of Class B shares opposite their names. They were present in person and proxied the other 300. I think that prevailed in 1942.

Mr. Marks: That is in the record.

Mr. Fisher: Yes, the record speaks for itself, but I wanted that credit.

263 *By Mr. Shuebruk:*

Q. Let me refer you, Mr. Lafount, to your testimony before the Select Committee under oath.

The Examiner: Page number?

By Mr. Shuebruk:

Q. On November 22, 1943, page 2270, as part 2 of the hearings:

"Q. And you continued to vote 400 shares of stock in his name?

"A. That is right."

Do you recall that?

A. No, sir, I don't recall it, but if it is in the record, I am quite sure that the record is correct and I am quite sure that the mistake in the record and in my statement was, "continued." I voted it, but I did not continue to vote it from that time. There were many questions at that hearing which I thoroughly misunderstood and did not at a later date make the same replies.

Q. You had an opportunity to correct the testimony, did you not, before it was finally inserted in the record?

A. I had already corrected most of the statements, sir,

at a hearing a week later when I found that I had been depending on my memory and recollection, and also misunderstood. It was my understanding the questions that were propounded to me were particularly having to
264 do with my negotiating, and not necessarily owning and still owning stock, and so on. It was just, "Did you do the negotiating?", or "Did you actually buy, physically buy?"

Q. This related to voting, sir, this question.

A. And I recall having voting by proxy rather recently, but I did not recall all the years, and I should not at that time have made that statement. That was the best of my recollection, and I wasn't clear at all as to what they meant. They asked for the records. They were brought to them, they examined them, and they knew the facts.

Q. You also recall your testimony at that time, sometime, which appears on page 2260 of the Part 2 of the printed hearings of the Select Committee:

"Q. And of the B stock, you have all but what? Out of 1,000 shares of B, you have all but what?"

A. I have 102 shares.

"A. All but that which Mr. George and Mr. Sanford Cohen have.

"Q. George has 100 shares. What does Sanford have?

"A. I think George has 100 now, and Sanford 200 or 300.

"Q. And you own a total of 17(?) out of 2,000?

"A. Yes.

"Q. And your ownership of that stock has continued uninterruptedly since 1938?

265 "A. That is right."

Let me further direct your attention to some testimony on the same page:

"Q. There isn't any question in your mind that you have been in complete control of the radio station since 1938, is there?", and this testimony is concerning Station WORL, is it not?

A. That is correct.

Q. "A. Except for Mr. Nordblom's interest.

"Q. That was insignificant, wasn't it? You only paid him $200?

"A. Whatever it was.

"Q. And other than that, you have been in complete charge of the station since 1938?

"A. Yes."

That testimony was under oath, was it not, Mr. Lafount?

A. It was under oath, yes, sir, and I think you will find that I was using my best recollection. May I state in connection with this hearing. I had no knowledge of what the hearing was about. I had no information. When I stepped into the room, I did not know on what subject I was to be question. I had been before that Committee many times, and I had assumed that it was a continuation of another subject. I had no idea that it was WORL.

My recollection was very, very, very imperfect. It
266 had been six years or seven since anything had been done in connection with my ownership of any of those stocks. It was my understanding from what had been said prior to the actual questions that they were interested in knowing who actually negotiated and bought the stock, and I bought the stock, to which I testified here.

I was in error when I made those statements. I had a chance to correct the record, sir, as you suggest, but I had already corrected it, and the record a week later gave the facts as to who owned the stock.

Q. That testimony was given on the first occasion before the Select Committee, was it not, before Certificate 3-B for 300 shares had been finally transferred out of Mr. Nordblom's name on the stock books of the corporation?

A. That's right.

Q. And your testimony on the second occasion was after the Certificate B-3 had been transferred to George and Sanford Cohen?

A. That is right. My memory was refreshed. I had a

chance to look at the records and I knew what the facts were.

Q. As a matter of fact, Certificate B-3 was transferred between the two times you testified at the Select Committee, was it not?

A. That is correct.

267 Mr. Shuebruk: Mr. Examiner, I am now going to show witness and introduce in evidence various reports that have been filed with the Commission concerning the ownership of stock and the officers and directors and representations concerning control of the corporation which have been filed with the Commission by the licensee.

I ask that the Examiner take cognizance of the various Commission rules that have been in force since the transaction on March 25, 1937.

The Examiner: We will take judicial notice of the rules.

Mr. Shuebruk: Directing the Court's attention to the filing of information by the stockholders.

The Examiner: Objection?

Mr. Fisher: No.

The Examiner: That will be done.

(Discussion off the record.)

Mr. Shuebruk: During the testimony, direct testimony of Mr. Lafount, there was introduced a summary of the reports to the Commission by the licensee concerning the stock ownership and the various transfers that were made, and at that time Commission counsel stated that they would like to have associated with that a summary of those reports in somewhat different form from that introduced by the applicant.

The Commission's summary is in the form of a recapitulation as to each date that same report was

filed showing a transfer of stock, and without ob-
268 jection, I would like to offer that as Exhibit 4-A, to be associated with the Applicant's Exhibit 4.

Mr. Fisher: No objection.

The Examiner: That will be done.

(Document referred to was marked Commission's Exhibit 4-A and received in evidence.)

Mr. Fisher: That has been admitted. For counsel's information, I note you start with the transaction of stock there up on the first A and B, but isn't there one transaction ahead of this? Our records show where Crockwell, Eynon and Phelan owned the shares before Nordblom came into it.

Mr. Shuebruk: You are quite right.

The Examiner: The first entry here shows Crockwell, Eynon and Phelan.

Mr. Fisher: But they owned the B stock themselves. They owned all the stock in it, and that was proved by the Commission, that assignment, do you remember that?

Mr. Shuebruk: That is right.

Mr. Fisher: I show you that on my exhibit and it doesn't show here. That was approved by the Commission.

The Examiner: That will show on Applicant's Exhibit No. 4.

Mr. Fisher: That is right, and that is from the old Babson Statistical Company to this new one, and then it starts from there. All the rest are correct. The rest are the same, but that one does show on mine. It begins after the assignment.

269 Mr. Shuebruk: With reference to Applicant's Exhibit 4, it begins with the information which is contained in Applicant's Exhibit 4 from the beginning, the report dated July 29, 1936, filed August 13, 1936.

Mr. Fisher: That is right, your Honor.

Mr. Shuebruk: I am sorry. We limited it.

Mr. Fisher: The other was an assignment that was approved, and that is a Commission record, and my report so shows that, but I have to start from there, and I wanted to be sure to find it in.

Mr. Shuebruk: Limited to the report of this particular proceeding.

Mr. Fisher: Yes, yes.

By Mr. Shuebruk:

Q. I show you the report, Mr. Lafount, filed by the licensee on March 31, 1937, already introduced as Commission's Exhibit 9, which reports the transfer of the 400 shares of Class B stock from Eynon and Phelan, 150 each, and Mr. Nordblom, 100. That transfer was to you. That report does not contain, does it, any information concerning the sale or purchase of the 300 B shares?

A. No, sir.

Q. Represented by Certificate 3-B, which Mr. Nordblom sold?

Mr. Fisher: Who signed that? Did you put that
270 in the record?

Mr. Shuebruk: I think that is already in. It is signed by Mr. Davison, is it not?

Mr. Fisher: Yes.

The Witness: That is correct.

Mr. Shuebruk: As Commission Exhibit 17, Mr. Examiner, I would like to introduce copies of questions and answers typed from various applications filed by the applicant with the Commission since March, 1937. We have the original license records here, showing the complete application forms. We have, in an effort to make the material convenient to handle and to cut down on the bulk of it, limited it to copying the questions giving information as to officers, directors, and stockholders.

There is a total of— How many are there here, do you know?

Mr. Marks: I don't know. The sheets are marked from A to S, a total of some 18 or 20 sheets.

Mr. Shuebruk: I would like to offer this all as one exhibit, subject to any additions or corrections which Mr. Fisher may desire to make.

Mr. Fisher: I have no objection, your Honor, to its admission with the explanation made and with the understanding, of course, that we have the right to look at these applications to see if there are any other questions pertinent to the issue.

Mr. Shuebruk: Certainly.

271 Mr. Fisher: Or may change the meaning of some of these questions; these are just some questions taken out by the whole application.

The Examiner: By whom were these various applications signed?

Mr. Shuebruk: That is revealed on each.

Mr. Fisher: That is revealed, but it looks like they are practically all Lafount.

Mr. Shuebruk: They are.

Mr. Fisher: Are they all Lafount?

Mr. Shuebruk: I think they are.

The Examiner: Well, it is probably a convenient way of offering this evidence, and if counsel for the applicant will examine the original documents which are here available and satisfy himself that the signature attached thereto is that of Mr. Lafount, or whoever this document shows signed the applications, and also that the questions and answers are correctly copied on this exhibit, and have the privilege to offer any other questions and answers in any of said applications as he feels may be pertinent, I see no objection to having the documents coming into evidence, and it will save a lot of time for everybody.

Mr. Shuebruk: It will always be more convenient for the Examiner, I think.

The Examiner: Yes, and counsel can have a copy of that.

272 Now, I suggest there be no ruling on that now for this reason: during the noon hour or the noon recess, applicant's counsel will have an opportunity to check these things and state whether or not he stipulates that this may be introduced.

Mr. Fisher: Your Honor, I know we couldn't get through in any noon recess twenty some exhibits. We will make it subject to our coming back today if there is any other evidence to be introduced from these applications, and if so, we will do it, but we couldn't begin to do it at noontime.

The Examiner: Well, I haven't seen this document. I note, in the first place, it refers to a particular document filed on a particular day.

Mr. Fisher: But fifteen to twenty documents.

The Examiner: I understand, but just a minute, Mr. Fisher. I assumed it shows the document, the date of filing, the name of the person executing the same, and the number of the questions therein contained, together with the answer given. Am I correct in that?

Mr. Fisher: That is correct.

Mr. Shuebruk: The sheets do not show that the applicant in each case was the licensee involved in this proceeding, but with that addition I think the information is complete.

Mr. Fisher: We assume it is.

The Examiner: We can stipulate this all as information taken by information filed by this applicant in this case.

273 Now, with that as an index, Mr. Fisher, it occurs to me you should examine it very speedily.

Mr. Marks: They are all marked with appropriate markers here.

Mr. Fisher: You have them all here and marked?

Mr. Marks: Yes.

The Examiner: My only interest is to try to complete the record before we go, and perhaps you can examine them. If you cannot, perhaps we will have to do something else.

Mr. Fisher: All right.

The Examiner: This may be marked as Commission's Exhibit No. —

Mr. Shuebruk: 17.

The Examiner: —17, and I will not rule on it until Applicant's counsel has an opportunity to examine it.

(Document referred to was marked Commission's Exhibit No. 17 for Identification.)

The Examiner: And, incidentally, if there is any question about the signature appearing, why, the applicant's counsel can submit the document to Mr. Lafount.

By Mr. Shuebruk:

Q. Mr. Lafount, I show you a series of papers marked Commission Exhibit 17, and direct your attention to 4-B, calling for the names and addresses of the officers, directors, and principal stockholders of the applicant.

274 A. Yes, sir.

Q. This application was dated April 10, 1937, and signed by you as president?

A. Yes, sir.

Mr. Fisher: Well, now, your Honor,—are you going through each one of those?

Mr. Shuebruk: Not each one.

Mr. Fisher: I object. They speak for themselves and they are put in for that purpose, and what is the us of reading that into the record?

The Examiner: Well, let him complete with this one.

Mr. Shuebruk: I want to check the information.

Mr. Fisher: If you are going to check all the information, and read it out, there is no sense in putting it in by that method. Go ahead with that one, and excuse me.

By Mr. Shuebruk:

Q. The answer given shows yourself as president, Robert C. Nordblom as vice president and Robert H. Davison as secretary-treasurer, does it not?

A. Yes, sir.

Q. Mr. Nordblom was not vice president at that time, was he?

A. I suppose he was. This record shows so. I think he must have been. I don't know the date of it and I couldn't recall, sir, and if there is any question, I should have
275 to refer to the minute book.

Q. Well, will you refer to the minute book, and if you find that Mr. Nordblom was vice president at that time, later insert that into the record.

Mr. Fisher: Well, your Honor, what does that matter? This summary shows what is there. I thought you meant—does it show there that he is vice president any more?

Mr. Shuebruk: Yes.

The Examiner: The question now is whether or not in truth and in fact he was vice president at that time.

Mr. Fisher: I thought you said, "insert it in there if he was."

Mr. Shuebruk: I am sorry. I said, "insert it in the record."

Mr. Sanford Cohen and George Cohen—that I negotiated for them.

The Examiner: Now, just a minute, Mr. Lafount. You refer to the contracts completed. I consider that statement doesn't refer to contracts completed, nor does the Commission's request relate to contracts completed. It relates to existing contracts.

Now, in the light of that, there was a contract outstanding, was there not?

The Witness: There was a contract outstanding signed by Mr. Nordblom and Mr. Fisher as trustee. That, perhaps, could have been filed, but certainly it was not a contract that I, personally, had entered into.

The Examiner: But it did affect the stock of the corporation?

The Witness: It affected the stock, but not the control, in my opinion.

The Examiner: Of course, that is a question of law. The Commission will have to make that examination later.

The Witness: Yes, and in 1937, I am not so sure.
279 My interpretation of the law and the rules and regulations then was quite different. I think our rules and regulations were quite different from what they are now, but by the present rules it may have been possible, and even under those rules it may have been possible that it would have been proper or authorized to have filed it, and if that is true, maybe it should have been filed.

The Examiner: Proceed.

By Mr. Shuebruk:

Q. As far as the Commission's records are concerned, Mr. Lafount, did they not show that at that time you owned

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400 shares; Mr. Nordblom, one of the previous owners of the station, owned 400 shares, and Mr. Crockwell, one of the previous owners of the station, owned 200 shares of the voting stock?

A. I think at that time you could call Mr. Crockwell and Mr. Nordblom as previous owners. They were stockholders.

Q. They were parties who had been in the corporation and had held stock in the corporation prior to the sale and purchase of March 25, 1937.

A. And still do at this time.

Q. And still do at this time?

A. Yes, sir.

Q. But the Commission's records at that time, as a result of information filed by the licensee, showed that a
280 total of 600 shares were in the hands of people who had been in the corporation prior to the transaction of March 25, 1937.

A. Yes, they had been in the corporation prior to that time, and, as a matter of fact, were still in.

Q. And so far as the Commission's records were concerned, only 400 shares of the voting B stock had been transferred to new parties?

A. To new parties, and whereas Mr. Crockwell still had his voting shares.

Q. Still had 200?

A. And Mr. Nordblom still had 100, at least.

Q. 100. That is correct.

Now, there is no information given to the Commission with respect to the transfer of that additional 300 shares which, together with the 400 shares reported, constituted a majority stock interest in the corporation?

A. No, sir.

Mr. Shuebruk: I would like to offer Commission Exhibit 18, Mr. Examiner, with a further statement that the Commission's files show it was filed with the Commission on May 1, 1937.

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Mr. Fisher: No objection.

The Examiner: Be admitted.

(Commission's Exhibit No. 18 was received in evidence.)

(A document was marked Commission's Exhibit No. 19 for Identification.)

281 *By Mr. Shuebruk:*

Q. I show you Commission's Exhibit No. 19, marked for identification, Mr. Lafount.

A. Is that the same as this?

Q. Not exactly, no—which is an affidavit—oh, it is the same, yes—which is an affidavit signed by you in behalf of the licensee, dated June 18, 1937. Do you recognize that document?

A. No, sir, I don't.

Q. There is no doubt that you filed it with the Commission, however?

A. I suppose not. I don't recall it. I don't even recall the thing.

Q. WXIQ was related station owned by the Broadcasting Service Organization, Inc.

The Examiner: Hand him the original document and ask him if it was his signature.

By Mr. Shuebruk:

Q. Let me show you the original document marked as Commission Exhibit 19 for Identification. Is that your signature?

The Examiner: Is that your signature?

The Witness: That is right, it is.

Mr. Shuebruk: I offer Commission Exhibit 19, Mr. Examiner, with the further statement that it
282 was filed with the Commission on June 19, 1937.

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The Examiner: Objections?

Mr. Fisher: No objections.

The Examiner: Admitted.

(Commission's Exhibit No. 19 was received in evidence.)

Mr. Shuebruk: I read the wrong file date on that, Mr. Examiner. The file date is June 18, 1937, and not June 19, 1937.

The Examiner: All right.

By Mr. Shuebruk:

Q. Mr. Lafount, do you recall your testimony during the proceeding earlier referred to, identified as Docket 4206 before the Commission, concerning the application of the licensee for full-time operation. That hearing was held on May 3, 1937. Let me show you transcript of testimony from the original docket in that proceeding.

283 A. Yes, sir.

Q. On page 56, Mr. Fisher was questioning you, and he said:

"Q. I hand you herewith Exhibit 26 for Identification and ask if that is such a record as you have made from the books and are familiar with all of the stock ownership as contained therein.

"A. That is a condition of the books, and I am acquainted with them and I know definitely that that reveals the condition of the books as they exist today.

"Q. And the present ownership?

"A. And the present ownership.

"Q. And that shows that you would own about 40, is that correct, Mr. Lafount?

"A. 40 per cent of the voting stock."

A. Yes, sir.

Q. Do you recall that testimony?

A. No, sir. No question having made it, but I don't recall it.

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Q. Do you think now that that was correct testimony?
A. 40 per cent? I think so.

(Document referred to was marked Commission's Exhibit No. 20 for Identification.)

The Examiner: This is Exhibit 20.
Mr. Fisher: 20. That second affidavit was 19.
284 Mr. Shuebruk: I offer that as Commission's Exhibit number 20.
The Examiner: Which is a copy of the exhibit about which you just questioned the witness?
Mr. Shuebruk: Right, identified as Exhibit 26 in that proceeding.
Mr. Fisher: No objection.
The Examiner: Be admitted.

(Commission's Exhibit Number 20 was received in evidence.)

By Mr. Shuebruk:

Q. Let me refer back to Commission's Exhibit Number 17, Mr. Lafount. The same distribution of the common voting stock, 400 shares to you and 400 shares to Mr. Nordblom, was also contained in the applications by the licensee filed with the Commission on July 16, 1937, and signed by you.
A. Yes, sir.
Q. And in an amendment to an application filed by the licensee on December 28, 1937, and signed by you as president?
A. That is right.

(Discussion off the record.)

Mr. Shuebruk: I offer as Commission's Exhibit 21 the report on form number—FCC Form number 728, pursuant to Commission's rule number 340.81, filed by the licensee with the Commission on July 14,

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1938, and signed by Mr. Lafount. You recognize
285 your signature on that, Mr. Lafount?

A. Yes.

Mr. Shuebruk: Are you going to admit that, Mr. Examiner?

Mr. Fisher: May it please his Honor, we have no objection to this except cluttering up the record. Don't Exhibits 4 and 4-A show all these?

Mr. Shuebruk: 4 and 4-A? Oh, yes. They show the summation of them, not the full report.

Mr. Fisher: If there is no particular purpose, of course, I don't want to hold it out.

The Examiner: Do I understand that 4 and 4-A —is that a summary of the filing?

Mr. Fisher: I will see about the tabulation of all of them.

Mr. Shuebruk: Just a chart of the stockholdings of the different dates.

(Discussion off the record.)

Mr. Fisher: No objection to the admission, 21.
The Examiner: All right, be admitted.

(Document referred to was marked Commission's Exhibit Number 21 for Identification.)

By Mr. Shuebruk:

Q. This report, Mr. Lafount, like the earlier ones—

Mr. Fisher: 728 forms.
Mr. Shuebruk: Yes.
286 Mr. Fisher: What date?
Mr. Shuebruk: 7/11/38, filed 7/14/38.

By Mr. Shuebruk:

Q. That still shows 400 shares of common owned by you, 400 shares owned by Mr. Nordblom and 200 shares owned by Mr. Crockwell?

A. Yes, sir.

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Q. The form recites, does it not, "if stock is voted by the person other than the record holder, state the name, legal residence and the citizenship of such person. Attach a copy of the contract or other legal instrument authorizing same."

A. It does.

Q. No answer is given to that question.

A. No, sir.

"Q. If the stock is beneficially held by a person—natural or artificial—other than the record holder, and such beneficial owner has not been identified in reporting the voter other than the record hold, state the name, legal residence and the citizenship if a natural person," and there was no answer to that question.

This purports to be a complete report of the ownership of the licensee as of that date.

A. Yes, sir.

Q. The form also calls, does it not, for the filing
287 of contracts, written or oral, of other instruments which affected the voting rights of other stock, the ownership or control over the station or rights or interests therein.

A. That is correct.

Q. And the answer given to each of those is?

A. Was "none."

Q. Is "none."

In connection with asking for contracts, the form also provides, does it not, that oral contracts shall be reduced to writing.

A. That is correct.

The Examiner: Were there any contracts attached to that document when it was filed?

The Witness: No, sir.

By Mr. Shuebruk:

Q. The report provides no such contract in existence, Mr. Examiner. Mr. Bulova purchased 200 shares of the

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B stock formerly owned by Mr. Crockwell in July 28th, did he not?

A. No, sir.

Q. Did he not foreclose on his loan to Mr. Crockwell?

A. That is right.

Q. Security for which Mr. Crockwell had pledged the 200 shares of B stock?

A. I don't want to be technical, but he did acquire it, but he did not actually purchase it.

288 Q. You mean Mr. Davison got that not through a purchase?

A. It was a foreclosure, but he became the owner of it through that foreclosure.

Q. That purchase by Mr. Bulova of the 200 shares of B stock was not reported to the Commission?

A. It was only a question of a mistake on the part of Mr. Nordblom, or Mr. Davison, who was instructed by me to purchase or to foreclose the loan, and I had to do so in the name of Mr. Sanford Cohen. He presumed, as I explained yesterday, some technicality in the law there which he said enabled him to handle the situation a little better by foreclosing in the name of the party who had actually made the loan, and then it could be instantly transferred to the buyer.

Q. And after Mr. Bulova had acquired title as a result of his purchase he made a bill of sale to Mr. Sanford Cohen on September 30?

A. Almost immediately, I think.

Q. Two months?

A. Is it?

Q. Or more?

A. It was done all in error, as I have already stated.

Q. But that acquisition by Mr. Bulova was not reported to the Commission at all?

A. No, sir.

289 Q. The acquisition by Mr. Cohen was, however, reported to the Commission.

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Mr. Shuebruk: Oh, I offer in evidence Commission's Exhibit 21.

The Examiner: Objection?

Mr. Fisher: No.

The Examiner: Admitted.

(Commission's Exhibit 21 marked for Identification was received in evidence.)

Mr. Shuebruk: I now offer Exhibit 22, "Report on form number 730" filed by the licensee with the Commission, signed by Mr. Lafount as president.

Mr. Fisher: What is the date?

Mr. Shuebruk: Dated October 26, 1938, and filed with the Commission on November 22, 1938.

By Mr. Shuebruk:

Q. Do you recognize your signature?

A. Yes, sir.

Q. That shows that the person transferring the stock was Mr. Crockwell and not Mr. Bulova. That is correct, is it not?

A. Yes, sir, was his stock.

Q. Before Mr. Bulova had acquired it?

A. Well, before it was foreclosed. Mr. Bulova did not go to Mr. Crockwell and buy it. That is one of those
290 awkward things to report. I just don't know. Perhaps he should have said, "J. W. Day & Company, foreclosing on this mortgage. I don't know.

Q. Well, the people who had title were, in order, Mr. Crockwell, Mr. Bulova and Mr. Cohen.

Mr. Fisher: I think this is a legal conclusion. It is probably correct as to the actual title, yes.

The Examiner: Yes, I think the record reflects that.

The Witness: It was my opinion, may I say, not being a lawyer, that that was not correct, because I

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very definitely instructed Mr. Davison to buy this in for Mr. Cohen, and Mr. Davison did not follow the instructions and bought it, and as I say, through some legal question. Nevertheless, it is true that as it was handled the transfer—the stock was actually delivered to Mr. Bulova, and immediately or very shortly thereafter, assigned by him.

That, as I understood and still understand, was only to facilitate matters and was really a technicality.

Mr. Shuebruk: Has Commission's Exhibit 22 been received?

Mr. Fisher: I have no objection. This is a certificate that shows transfer from Mr. Crockwell, one of the three owners, to Mr. Sanford Cohen, a new owner.

Mr. Marks: Not a certificate, a report on 728 form.

Mr. Fisher: That is correct.

291 The Examiner: Commission's Exhibit 22 is admitted in evidence.

(The document referred to was marked Commission's Exhibit Number 22 for Identification and received in evidence.)

By Mr. Shuebruk:

Q. The consideration shown by the report, Mr. Lafount, is $100, having been received, and $100 having been paid.

A. Yes, sir.

Q. You testified yesterday, did you not, that the total amount involved or paid was $5100.

A. Yes, sir, but I also testified that the amount bid in and actually received to the credit of Mr. Crockwell was $100.

Q. How much did Mr. Cohen pay?

A. He paid Mr. Crockwell $100.

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The Examiner: That was the same transaction about which you testified yesterday, that $100?

The Witness: Yes, sir.

By Mr. Shuebruk:

Q. Mr. Bulova paid the $100 from Mr. Crockwell, did he not?

A. No, sir.

Q. In the first instance.

A. Mr. Bulova? Ask me that again.

Q. Mr. Bulova, at the time of the foreclosure
292 sale—Mr. Bulova paid the $100 in the first instance?

A. I did for him—for Mr. Cohen. As a matter of fact, it was not for Mr. Bulova. Mr. Bulova did not know that anything was going on at all. He agreed definitely that Mr. Cohen could pay it if the bids permitted. We did not know whether there were other bidders there. The price could have been bid up where it would have been a sum in excess of the loan.

Q. Mr. Cohen, however, you testified, paid a sum of $5100 for the stock?

A. That is correct.

Q. You paid $100 for Mr. Crockwell. Also, according to your testimony, he paid an additional $5,000 to Mr. Bulova.

A. That is correct, just so you understand why. I want the record to reveal the facts.

Q. Reports of those transactions, Mr. Lafount, are supposed to be filed under the Commission rules, within 30 days after the transfer of the stock takes place, isn't that so?

A. That is correct, yes, sir.

Q. And in this case the report was not filed at all of the acquisition by Mr. Bulova and was filed some months late of the acquisition by Mr. Cohen?

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A. That is correct. There were too many lawyers involved to really get this all done in time, each depending on the other, I fear.

293 Q. You might also bring out, this same report, Commission's Exhibit 23—

The Examiner: 22.

By Mr. Shuebruk:

Q. On 22 she resigned as treasurer, and that George Cohen had been elected in her place on August 24, 1938.

A. That is right.

Mr. Fisher: Mr. Shuebruk, that is the first one that shows Mr. Cohen coming into this.

Mr. Shuebruk: Filed with the Commission.

Mr. Fisher: Yes, first notice of the Commission, and at that time Mr. Cohen and Lafount owned 600 shares out of the 1000, is that right?

Mr. Shuebruk: That is quite right.

Mr. Fisher: With the Commission's records.

Mr. Shuebruk: So far as the Commission's records are concerned.

Mr. Fisher: Yes, notice to them.

By Mr. Shuebruk:

Q. You still had not filed with this report anything to indicate the transfer by Mr. Nordblom of 300 shares of B stock or any copies of contracts relating thereto?

A. To my knowledge, nothing was filed with the Commission in connection with that until November, 1943.

Q. Let me show you from the original records of
294 the Commission, Mr. Lafount, a report on form number 730 signed by you on the 30th day of April, 1941, reporting the purchase—I am ahead of myself—reporting the purchase of 100 shares of A stock by you from Lester Endlar on March 31, 1941.

OOR COPY

A. Yes, sir.

Q. In fact, you had purchased that stock on September 24, 1940, had you not?

A. That is correct.

Q. What is the reason for the six months' delay in filing that information with the Commission?

A. It was certainly an oversight. There is no reason, there is no justfication for it. It was definitely a neglect either on my part or someone else's. I relied on others or they relied on me, and I regret it very much. It was not filed. It was an error and I will take the blame rather than to pass the buck to attorneys of anyone else, but I thought it was filed, but it evidently wasn't, and I later on found that it was not.

Q. The date of the transfer is given as March 31, 1941, which would bring it within 30 days of the time of filing, as required by the rule. As a matter of fact, the purchase had been six months earlier than that?

A. That is correct.

Q. I notice also that the amount received and paid is given as $3500. The purchase price of that was
295 $3100, is it not?

A. That is correct. Expenses, lawyers' fees and so on, made the total cost $3500.

Q. Mr. Endlar did not receive $3500?

A. No, sir.

Q. Although it is so reported?

A. Well, that amount was the amount paid, but not to Mr. Endlar. That was the cost of the stock.

Q. There are two separate forms here, one for the amount paid and one for the amount received, and the same amount, $3500, is given for both.

A. I see.

Q. Mr. Sanford Cohen had become a director on March 18, 1941, had he not?

A. I am sorry, I cannot remember. If you have looked

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at the record and say that he did, I will certainly admit it and agree to it. Of my own knowledge, I cannot remember.

Q. I show you the minute book of the corporation, special meeting of the stockholders, in lieu of the annual meeting held on March 18, 1941.

A. That is correct.

Q. The minutes of that meeting show that directors elected for the following year were Mr. Lafount, Mr. Davison, and Sanford H. Cohen.

A. That is correct.

296 Q. Well, that was not reported to the Commission, was it?

A. I don't know, sir.

Q. There is no report on this form, which is filed on the 30th of April, 1941,—

A. Change in officers.

Q. —change in officers.

A. No, sir.

Q. When you reported, Mr. Lafount, the consideration involved in the acquisition by Mr. Cohen of the 200 shares of B stock, you reported the amount paid to Mr. Crockwell, namely, $100. In this report of the purchase by you of the 100 shares of A stock you report the amount paid out?

A. Yes, sir, and that was $100 paid out, the amount paid out and involved in the actual transaction, and I want it connected up definitely with the purchase of the stock at the foreclosure proceedings.

Q. Mr. Sanford Cohen, however, according to your testimony, paid out more than $100.

A. I had personally guaranteed the loan to Mr. Bulova. Mr. Cohen later bought the stock and assumed that guarantee which, in effect, means the same thing, when you get right down to brass tacks.

Q. Paid $1500?

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A. Certainly, but I want you to know how and
297 why, why it was so reported.

(Discussion off the record.)

The Examiner: Proceed.

By Mr. Shuebruk:

Q. I got that last report a little bit out of order, Mr. Lafeunt. Let me take you back to your acquisition of 900 shares of that A stock which was sometime before you purchased your 900 shares of stock from Mr. Endlar. You recognize your signature on this report on form number 730?

A. Yes, sir.

Q. Filed with the Commission?

A. Yes, sir.

Q. On April 15, 1940, reporting the transfer by Mr. Crockwell and the acquisition by you of certificates A-1, A-3 and A-5 for a total of 900 shares and the A stock.

A. That is right.

Q. That report was filed one year, a little over a year after the transaction had taken place. The report itself shows that it was transferred on March 8, 1939. Why was that delay involved in reporting this acquisition?

A. Well, there was gross negligence, in the first place. Evidently, I did not look after things that were of the utmost importance to myself nearly as well as I did the things that others were connected with, but there always was some question, not too serious, but some discus-
298 sion as to whether or not it was so important a stock that was not voted, but should have been filed.

Q. You were acquiring a substantial interest in the corporation at this time?

A. Very definitely.

Q. Were you not?

A. Yes, sir.

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Q. This stock was carried on the Corporation's books at $44,000, total of 1000 A shares?

A. Yes, sir.

Q. Which carried very valuable rights in terms of preferences?

A. Yes, sir.

Q. And it is not uncommon for the acquisition of a large block of A shares to exercise considerable influence in the affairs of a corporation.

A. I shouldn't know how, but perhaps that is possible. I wouldn't mind agreeing with you on that, but may I add also that I recall now that on reports made to this Commission prior to this date this stock was shown as belonging to me. I admit that the form 720 had not been filed, but I believe that other applications that had been filed with the Commission indicated that I owned that stock, because I remember Mr. Fisher writing to me and saying, "What is the matter, you haven't ever reported this 900 shares of stock, and the Commission wants to know
299 about it," so I had declared to send it to him, but thought that it was reported, that the Commission had knowledge of it.

Q. The fact is that shortly before this date you had filed an application which did not disclose Mr. Crockwell as being, any longer, the owner of the A stock, and accordingly, a request was made of you to furnish the Commission with complete information as to the status of the ownership of that A stock.

A. That may have been it. I recall something of the kind, and I think probably that was exactly what happened.

Q. If you will look at Commission's Exhibit 17, Mr. Lafount, I think you will find that the first time that that ownership by you of the 900 preferred was in an application for construction permit filed with the Commission, was on April 1, 1940, so that the Commission knew that that acquition by you was a year or more after you had acquired the stocks.

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A. That is right.

Q. And still there was—neither of these reports, the one reporting the 900 A transaction or the one reporting the later purchase of the 100 A stock, contained any report to the Commission of the 300 B shares represented by certificate B-3.

A. That is correct.

300 Q. And in each of them there was an answer of "none" given to the request for information for contracts affecting the ownership control of the licensee.

A. That is correct, yes.

Q. Who prepared these several reports, Mr. Lafount?

A. Referring to which, sir?

Q. The 728 and 730 forms we have just been discussing.

A. I think most of them were prepared by Mr. George Cohen. I am not sure.

Mr. Shuebruk: I offer as Commission's Exhibit 23 an affidavit filed with the Commission by Mr. Lafount dated November 15, 1943, a sworn affidavit reporting the transfer of certain stock. Let me show you the original of this, Mr. Lafount.

The Witness: Yes, sir.

Mr. Shuebruk: You recognize your signature?

The Witness: I do.

Mr. Shuebruk: I offer Commission's Exhibit 23.

Mr. Fisher: No objection.

The Examiner: Be admitted.

(The document referred to was marked Commission's Exhibit Number 23 for Identification and received in evidence.)

By Mr. Shuebruk:

Q. What stock was involved in this report, Mr. Lafount?

A. 100 shares of class B.

301 Q. Do you recall what 100 shares that was?

A. Purchase by Mr. Cohen from Mr. Nordblom.

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Q. And when was that acquired?
A. Does this give you the information, sir?
Q. No, it does not.
A. Sorry.
Q. You do not recall when that stock was acquired?
A. Not for the minute.
Q. Is that part of the 300 shares?
A. No, sir, no, sir. This was purchased later.
Q. This was when?
A. In 1939, I think, 1940.
Q. This was the 100 shares which you purchased at the same time you purchased the 100 A from Mr. Endlar?
A. That is correct.
Q. In September, 1940?
A. Yes, sir.
Q. You at that time paid Mr. Nordblom $1500?
A. That is right.
Q. The consideration reported here is $1500.
A. That is correct.
Q. This is over three years after the stock had been acquired, had been purchased from Mr. Nordblom.
A. What is three years? Oh, the report of the file?
Q. The report to the Commission.
302 A. That is correct.
Q. That document was filed with the Commission November 17, 1943, shown by the files.
A. Yes.

Mr. Shuebruk: I offer as Commission's Exhibit 24 this document signed by Mr. Lafount and filed with the Commission on December 1, 1943, reporting the transfer of 200 shares of B stock from Mr. Nordblom to Sanford H. Cohen, and 100 shares from Mr. Nordblom to Mr. George Cohen. You recognize that?
The Witness: I do.
The Examiner: Objection?
Mr. Fisher: No objection.
The Examiner: Admitted.

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(The document referred to was marked Commission's Exhibit Number 24 and received in evidence.)

By Mr. Shuebruk:

Q. The consideration reported in connection with that stock is $3,334 for the 200 shares transferred to Mr. Cohen, and $1,666 for the 100 shares transferred to George Cohen.

A. Yes, sir.

Q. And you testified that they had paid how much for that stock?

A. How much for that stock?

303 Q. For these 300 shares.

A. I think they paid this amount reported here.

Q. To whom did they pay that?

A. Technically to me, but directly to Mr. Bulova.

Q. The total of those two figures is $5,000, isn't it?

A. That is right, yes, sir.

Q. Your testimony earlier this morning was that they had paid something like $7,900, I think, for this 300 shares after the adjustment with you.

A. That is right, that is right.

Q. Which is the correct figure?

A. Well, this is what we had agreed upon, except they were sharing the cost of the moneys and were required by me to pay the obligations of the Corporation.

Q. I do not understand that.

A. I am sorry. I will try again.

Mr. Fisher: We went all over that this morning, your Honor, as to how they arrived at those sums, and again yesterday.

Mr. Shuebruk: I am trying to find out this correct figure, your Honor.

The Examiner: Let the witness proceed.

The Witness: When I purchased 400 shares of the common stock from Mr. Nordblom, I agreed to pay $48,000 for the 400 shares, and out of that

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amount of money, all of the obligations of the Corporation were to be paid.

304 Now I reported in my report $30,000 as having been cost, as nearly as we could agree on a decision or agree as to the payment of that money that was used to pay the obligations of the Corporation. This was the amount that we agreed upon, plus whatever extra there may have been towards liquidating those accounts, or the advances that I had made or the money that I had to pay, those obligations of the Corporation, which was included in the $48,000.

Q. That left them with $22,500, whereas the consideration reported here is a total of $5,000.

A. Yes, but there were adjustments as well after the preferred stock was bought.

Q. That is right, and that reduced their payments to how much?

A. $7,900.

Q. Whereas the amount reported here is $5,000.

A. That is correct.

Q. Which is the correct amount?

A. The correct amount is the amount reported, plus an adjustment with me on those expenses that I had paid.

We have reported frequently on these reports that we have been referring to all morning, sir. One method of reporting was $100, where $50 and $100 was, in your opinion, the correct amount. Here we have two amounts, one reported as the amount paid or $7,100, $7,900, whichever it was.

305 Where did you get the figure $5,000, or a total of these two?

A. That was a figure we reached before we had a final adjustment.

Q. This is one of their interim adjustment figures?

A. Could have been.

Q. While the stock was still not transferred and while the Cohens still refused to take stock?

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A. No, we had no adjustment of any description at that time.

Q. Up until the time of this report?

A. That is right. We had adjustments, but not final adjustments.

Q. This was made, was it not, after the final settlement with Mr. Nordblom, at which time you paid $750 in connection with his claim?

A. That is correct.

Q. And you testified this morning that the total of $7,900 had been the amount which was the share of the Cohens and the total or combined purchase price of $52,500.

A. I testified, as nearly as I can remember, it was such a sum, and I now state to you, sir, and I am happy to say, if that was the amount, which I believe it was, that probably should have been in this amount, in this application.

306 That is the amount we agreed upon. That was their proportion, and whether it was divided up as to the proportion of the money I advanced to liquidate the obligations of the Corporation or not, I cannot tell you.

Q. I am not interested in forcing you to say anything, Mr. Lafount. I was just inquiring as to which was the correct figure, $7,900 or $5,000.

Mr. Shuebruk: I am through, Mr. Examiner.

The Examiner: Anything on redirect of this witness?

Mr. Fisher: I have a few questions, but I would like to adjourn now and collect them.

The Examiner: All right, we will recess until two o'clock.

(Whereupon, at 12:50 o'clock P. M., a recess was taken to 2:00 o'clock P. M., of the same day.)

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307 AFTERNOON SESSION

(The hearing reconvened at 2:00 P. M., following the noon recess.)

The Examiner: Are you ready to proceed, gentlemen?

Mr. Shuebruk: Yes, sir.

The Examiner: Mr. Fisher, you may take the witness on redirect.

Thereupon,

HAROLD A. LAFOUNT, the witness under examination at the time of taking the recess, resumed the stand and testified further as follows:

Mr. Fisher: May it please your Honor, there are just two or three matters I want to get into the record as far as we are concerned.

Redirect examination by Mr. Fisher:

Q. Mr. Lafount, I believe there was a question this morning about whether you knew about any letters, or anything between Crockwell and Nordblom, or words to that effect, as to any differences between them, and so forth.

Mr. Fisher: I would like to have this marked Exhibit 9 for Identification.

(The document referred to was marked Applicant's Exhibit 9 for Identification.)

By Mr. Fisher:

308 Q. I hand you Exhibit 9 for Identification and ask you to explain just what that letter is.

A. A letter from Mr. Davison to me.

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Q. Of April 25, 1938?
A. Yes, sir.
Q. And that deals with this Crockwell-Nordblom matter?
A. Yes, sir.

Mr. Fisher: At this time I wish to introduce Applicant's Exhibit 9.

The Examiner: Any objection?

Mr. Shuebruk: None.

The Examiner: It will be admitted as Applicant's Exhibit 9.

(Applicant's Exhibit 9 was received in evidence.)

By Mr. Fisher:

Q. Mr. Lafount, I believe there were several questions asked you about the investigation on the Hill last fall. Did you come back and testify further at that hearing last fall?
A. Yes, sir, I did.
Q. And when you came back did you give further testimony with reference to the ownership of the stock, as shown on page 5143 of the transcript of that testimony?
A. Yes, sir.
Q. And the question was asked you:

"But you didn't know what claims he had against you until after the deal was made?"

309 "A. I did not not."

"Q. So that today the status of the Class A stock is that you own a thousand shares?"

"A. I own a thousand shares. I think it was reported to the Commission as soon as it was transferred. I own 400 shares of the Class B, but I think that was reported to the Commission immediately. Sanford Cohen owned 200 shares and I think that was reported, and then started the investigation and so on as to the ownership and right and title to the stock, and not until recently did we feel we had a right to transfer and report the other shares."

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Is that your testimony there before the committee after you had come back?

A. Yes, sir.

Q. The printed record is 2270.

I believe it was referred to this morning, and I think you said he came back.

Now, one further thing. Some question has been raised about the annual stockholders' meetings, and Mr. Nordblom's participation. I hand you the minute book of the corporation, and at the annual meeting on January 22, 1940, that shows there were present in person the following stockholders, representing the number of Class B shares set opposite their names: Robert C. Nordblom, 400; Harold A. Lafount, 400.

310 A. That is correct.

Q. Again in 1941, at the March 18 annual stockholders' meeting, held in Boston, the record shows there were present in person the following stockholders, holding the number of Class B shares set opposite their names, as follows: Nordblom, 400; Harold A. Lafount, 400.

A. That is correct.

Q. Again in 1942, at the annual meeting of the stockholders on March 18, the minutes show there were present in person the following stockholders, representing the number of Class B shares set opposite their respective names: Robert C. Nordblom and Harold A. Lafount.

A. Yes, sir.

Q. Was Mr. Nordblom present at all three of those meetings and participated in them as a stockholder with that number of shares?

A. Yes, sir, he was.

The Examiner: What do you mean by "participated"?

The Witness: Voted and discussed the problems of the corporation.

The Examiner: What did he vote?

The Witness: The number of shares, you mean?

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The Examiner: Yes.
The Witness: 400.
The Examiner: All 400?
311 The Witness: All 400.
Mr. Fisher: I think that is all on redirect.

Recross examination by Mr. Shuebruk:

Q. Applicant's Exhibit 9, which has just been introduced, Mr. Lafount, refers to Crockwell owing Nordblom a sizable amount of money, "which has not been collected and we are going after him on this account. Whether such procedure will prejudice your chances of an adjustment, I do not know, and I am holding up any vigorous efforts against Crockwell on Nordblom's behalf until you have determined your procedure."

The proceeding against Crockwell which you were interested in at that time was collecting the $5,000 loan which Mr. Bulova had made to Crockwell on July 12, 1937, and which was finally closed out by foreclosure of the 200 shares of B stock pledged as security in July of 1938?

A. That was included in it.

Q. Would you have any other claims against Crockwell at that time?

A. Mr. Crockwell and Mr. Nordblom—

Q. I am talking about yourself and Mr. Bulova's, or the Cohen claim against Crockwell. As far as you are concerned, it was only the $5,000 loan from Bulova to Crockwell?

A. Our understanding of the letter was that it
312 would jeopardize our interest in getting adjustment with Nordblom and Crockwell.

Q. Do you know what is referred to in the letter, by "Crockwell owing Nordblom a sizable amount of money which has not been collected"?

A. No, sir, I do not.

Q. One of the provisions of the contract of March 16, 1937, between Crockwell, Eynon, Phelan, and Nordblom, as

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well as one of the provisions of the escrow agreement of March 25, 1937, was that Crockwell and Nordblom assumed the payment of all debts outstanding at the time of close of business on March 24, 1937. Do you recall that?

A. I recall the contract. I am not sure the contract said they would assume them. But for the purposes of clearing this up, I know that the money paid by me was to be used to pay off all the obligations.

Q. The provision I am referring to is contained also in the contract of March 16, 1937, between you, Mr. Crockwell, and Mr. Nordblom. That is Commission's Exhibit 3.

313 "Crockwell and Nordblom further agree as a part of the consideration hereof to pay or cause to be paid all of the debts and obligations of the corporation existing as of the close of business March 25, 1937."

A. Yes, sir, that is correct.

Q. And as a result of that agreement on their part there was later the occasion of Nordblom and Crockwell to assume obligations which had not been satisfied out of the original $38,000?

A. That is correct.

Q. As a matter of fact, Mr. Davison called on both Mr. Crockwell and Mr. Nordblom at the time such claims arose, subsequent to the closing, to pay said debts?

A. That is correct.

Q. And Mr. Nordblom had assumed those debts pursuant to his contract?

A. Yes, sir.

Q. And as a result of this agreement, the agreement which Mr. Nordblom and Mr. Crockwell made, Mr. Crockwell was obligated to pay a proportionate share of those obligations which Mr. Nordblom had paid?

A. I think that is correct.

Q. Isn't that the claim which Mr. Nordblom had against Mr. Crockwell that is referred to in Applicant's Exhibit 9?

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A. I am sorry, I don't know.

314 Q. You don't know of any other claim which Mr. Nordblom—

A. (Interposing) It was my understanding it was claims arising from that transaction.

Q. In connection with your testimony before the Select Committee, which was read into the record, what investigations and so on as to ownership and rights and title of the stock were you referring to at that time?

A. What was I referring to?

Q. Yes.

A. These shares of stock.

Q. What investigations and so on as to ownership?

A. Claims of Miss Whitwell.

Q. And your first knowledge of those claims was when?

A. 1939.

Q. At the time Mr. Crockwell wrote you in May that Mr. Hines, an attorney for Miss Whitwell, was looking into the contract?

A. I think it was before that time, sir. My attorney, Mr. Davison, as I told you this morning, I believe, advised me there was some claim being made.

Q. In 1939?

A. Yes, sir.

(Discussion off the record.)

Mr. Fisher: No objection to 17.

The Examiner: Commission's Exhibit No. 17 is

315 received, which is a summary of certain questions and answers shown in various applications filed by the applicant corporation with this Commission on various dates, and executed by certain individuals whose names are also shown, which is a true and correct copy of the original record of this Commission, and it is admitted as such.

(Commission's Exhibit 17 was received in evidence.)

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By Mr. Shuebruk:

Q. Mr. Lafount, you understand that before the Commission can act on this renewal application for the license of the station, that it must be satisfied as to the true ownership of the station?

A. I do.

Q. And in order to enable the Commission to satisfy itself, will you make available to representatives of the Commission all your records, papers, and documents which relate in any way to the station, including in particular any records you may have with respect to the loan from Mr. Bulova and the recent payment to him, dealings with Mr. Sanford and George Cohen, other corporations which may have at any time entered into the transactions concerning WORL, such as Sanfont Realty Company, American Broadcasting Company, Atlantic Coast Network, and any others?

A. I shall be glad to make anything available. I am naturally interested in this matter. It involves a large
316 investment of my own. It means a good portion of my capital. I am extremely anxious to give them anything that they want. I regret exceedingly I was dilatory in filing some of these transfers, but I frankly know there are very few of the records to which you refer, if any, but if there are any, I shall look them up and be glad to give them.

Q. How soon will you make them available to representatives of the Commission?

A. If I find any, I could do it next week, any day you wish. I should like a few days to do it.

Q. Would you make them available by next Wednesday?

A. I think I can.

Q. And will you arrange to have any books of account, records, documents of Mr. Bulova's in connection with WORL, or your running account with him; your loan from him, and repayments to him, made available?

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A. If there are any. I know of none, but I shall be glad to ask him again.

Q. Mr. Bulova certainly maintains, does he not, some books of account connected with his radio interest?

A. I am sorry, I don't know that.

Q. Doesn't he have a personal ledger which carries the various amounts advanced to several stations, income and outgo, in connection with his radio investments?

A. Not that I have ever seen or heard of.

317 Mr. Marks: Mr. Lafount has testified in connection with the preparation of this hearing that the accountant gathered together certain information, showing the balances due him one time or another, credits advanced back and forth between himself and Mr. Bulova, and these various corporations. What we want to do is examine the records the accountant examined, or any other records pertinent to that, in order to determine whether these records are accurate.

Mr. Shuebruk: Mr. Lafount referred to certain check stubs, as well as certain notes, in connection with the loan he made from Mr. Bulova.

The Examiner: You will make all of that material available, Mr. Lafount?

The Witness: Yes, sir.

Mr. Fisher: Your Honor, I don't get the purport of this. If there is any purport to hold this record open to get further information, I am certainly going to object strenuously.

The Examiner: At this time there is nothing before the Examiner in the way of a motion for continuance and nothing for me to rule upon. When such a motion is made, then I will rule.

Mr. Fisher: Let us finish the case and before we close our case we will get together and decide on it. Why don't we do it that way?

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318 Mr. Shuebruk: All right.

By Mr. Shuebruk:

Q. So far as you are concerned, you will collect together what you have and make them available to representatives of the Commission by Wednesday?

A. Yes, sir.

Mr. Shuebruk: That is all.

The Examiner: Do you have anything further, Mr. Fisher?

Mr. Fisher: That is all with this witness.

The Examiner: You are excused.

(Witness excused.)

Whereupon,

SANFORD H. COHEN, called as a witness on behalf of applicant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Fisher:

Q. Will you state your full name and occupation?

A. Sanford H. Cohen, 1111 Park Avenue, New York City. I am an attorney, admitted to practice in New York State in 1911; admitted to the United States Supreme Court, Second Court of Appeals of the Second Circuit, Federal District Courts of the Southern District, Eastern District, and the Southern District of Kentucky.

Q. And during that time have you held official
319 positions with the Government?

A. I have.

Q. What were they?

A. From 1921 to 1923 I was Assistant United States Attorney for the Southern District of New York; and thereafter on two or three occasions I was Special Deputy Assistant on Election Frauds.

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Q. And were you born in the United States?

A. In New York City.

Q. Are you a citizen of the United States?

A. I am.

Q. In your legal connections or business dealings have you been acquainted with Mr. Arde Bulova?

A. I have, for 27 years.

Q. In what capacity?

A. Friend and attorney.

Q. Any business associate in some businesses?

A. No.

Q. What about some of these radio stations?

A. As an officer of some corporations that he is an officer, but I own no stock except one in WOV, which is a New Jersey corporation, which is a qualifying share required by the laws of New Jersey. That is the only stock in any radio broadcasting station, with the exception of the Broadcasting Service Organization.

320 Q. WORL?

A. WORL.

Q. Are you any officer in some of the other Bulova radio stations; if so, which ones and what positions?

A. Treasurer of Greater New York Broadcasting Corporation, which is WNEW; vice president and treasurer of WODAAM Corporation, also a director; and director of the Broadcasting Service Organization.

I am an officer in other corporations.

Q. Besides radio?

A. Yes; such as Artists' Bureau.

Q. In your connections with Mr. Bulova, as an attorney, have they been very close, to the extent of having offices with his firm?

A. Yes, sir. I am not only an attorney for him, but I am attorney for Bulova Watch Company and its subsidiaries.

Q. In that connection has there been a running account between you and Mr. Bulova?

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A. There is very close connection between his family and my family, and it's more than attorney really.

A. What about financial matters?

A. Financially, we are exchanging cash regularly. When I say "regularly," I might walk up to him and say, "Arde, have you got a thousand dollars?" and he will give it to me. He might ask me for a thousand or
321 two thousand and I would give it to him.

Q. That is the way your account has been running with Mr. Bulova for a number of years?

A. Yes. And in addition, there are, of course, other disbursements for him that we handle, my brother and I, as his lawyers.

Q. How long have you and your brother been in partnership together?

A. I think since 1920.

Q. About 20 years?

A. Since 1920.

Q. 24 years.

A. Yes, sir.

Q. The two of you together have acted for Mr. Bulova in these capacities you have described here?

A. Yes, sir.

Q. With reference to Mr. Lafount, how long have you known him?

A. About 20 years.

Q. Was that when Mr. Lafount came as Mr. Bulova's radio representative, or manager, or whatever it was?

A. Yes, sir.

Q. Since then have your relations with Mr. Lafount been rather intimate in business matters and other matters?

A. Oh yes, I know his wife and I have met his
322 daughter.

Q. Now, with reference to WORL, when did you first become connected with WORL in Boston?

A. That began in 1937. Mr. Lafount asked me if I

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wanted to participate. He said that he was buying 400 shares and had this offer, and asked if I wanted to participate. He said he thought that he could get me 300 A additional shares. He told me he had already spoken to Arde Bulova about it and that Arde told him he wasn't interested at all, and wouldn't have it, because it was a daytime station. So, I said, "O.K., I think George would want to participate with me, and we will take those 300 shares, if you can get them."

Q. And you heard the arrangement here that Mr. Lafount talked about originally with reference to those shares. What are the facts with reference to that?

A. Originally the contract which you made called for $4,500 for the 300 shares. That, of course, was disproportionate to what Mr. Lafount had agreed to pay for the 400 shares. So, we arranged that the proportion would be allocated in connection with the total 700 shares. In other words, the way it would be added up was $52,500 to be paid, the 400 shares for $30,000, and 300 shares for $22,500.

Q. That was the original arrangement then?

A. Yes.

323 Q. That deal was consummated, as testified here. Then what happened with reference to that stock?

A. Well, shortly thereafter the stock came to my office. It was addressed to Mr. Lafount in care of Sanford H. Cohen, and Mr. Lafount handed the stock over to me. That was 300 shares. I can't be exact as to dates, but thereafter he told me there was some question between Nordblom and Crockwell; Crockwell had said that Nordblom wasn't satisfied. And I told him, of course, that put a different picture on it, and I discussed it with my brother and I said, "Well, if this man isn't satisfied and is going to make any claims, he might get his stock or I may demand that he give my money back." That was left in the air that way.

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Mr. Lafount on other occasions told me he had further heard from Crockwell. I know Crockwell was once in my office. He came to see me.

Q. During this time, or later, or when?

A. During this time.

Q. You heard the testimony with reference to this going on for a considerable time. What were the facts as far as you knew them?

A. Then in 1939 Mr. Lafount got a letter from Mr. Crockwell in which he told about the fact that a Miss Whitwell was making claims in connection with the stock and claimed that Mr. Lafount knew this A stock
324 belonged to her, and also made claims that this attorney, a man by the name of Hines, was very well connected politically and knew everybody in Washington and was going to the Department of Justice and was going to the Federal Communications Commission. He mentioned so many departments, you would probably get dizzy following him around to all the departments he said he was going to. That, added to what had already been indicated about Nordblom's dissatisfaction, further led me to believe that I wanted to keep my name out of that thing until everything was cleared up.

Q. And this went on for how long?

A. My brother felt the same way because I had discussed it with him.

Q. This went on for how long, Mr. Cohen?

A. In 1941 there was that letter which Mr. Lafount got, which he sent to me, in which Mr. Hines made the claim in the letter for all the outstanding stock.

Q. In the meantime were there some lawsuits over this particular thing?

A. Yes; I think there were three lawsuits, which Mr. Davison notified Mr. Lafount about; lawsuits against a stock brokerage firm, G. P. M. Murphy and Company, and I think against the Pilgrim Trust Company, and I think another one against the Wellesley Trust Company.

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This is all a review of a recollection.

325 Q. You don't need to go into details.

Then there was one against the corporation itself?

A. Then there was the suit which commenced in 1942 and completed in the same year. I think the summons was served in January, 1942, and completed in the summer.

Q. And these matters were all going on during this interim, and you had this stock in your possession all the time?

A. That is right.

Q. You had never transferred it to your name?

A. That is right.

Q. What finally happened to that and what was the final culmination of that matter?

A. There was another 100 shares that my brother bought.

Q. Let's finish with that 300.

A. Those 300 were not reported. The 100 was reported on November 9, 1943.

Q. When was the 300 finally reported?

A. The final report, as appears now from the record, was made on November 27, I think, or the 29th.

Q. 1943?

A. Yes, sir. 200 were transferred in my name and 100 in my brother's name.

The Examiner: Was that the first date at which

326 you held this Class B stock in your name?

The Witness: No.

Mr. Fisher: I am going back to that right now. I just wanted to follow this 300 through the best I could.

By Mr. Fisher:

Q. Now, the 200 shares that we haven't testified to: What was the situation with reference to that? Was that when you first came into the corporation as a stockholder?

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A. In the summer of 1939 that stock was held as security by Mr. Bulova for the $5,000 loan. That was, I think, on a collateral note which was disposed of by auction by R. A. Day and Company, I think it is, according to the record, and Mr. Lafount arranged and sent it up to Mr. Davison. That was to be filed in my name for me. When the papers came back I was on my vacation. I didn't get back until sometime in September. I discovered that the stock had been bought in the name of Arde Bulova. The cleanest way to clear the title was to have Arde Bulova to make a simple assignment of the stock to me so as to show the actual facts. I was the owner of the stock at that time and have been since.

Q. Then, when it was assigned to you, you had a certificate made out in your name for 200?

A. 200, and it was reported a few months later.

And what was the payment for that stock?

327 A. The original report was $100.

Q. What did that $100 consist of?

A. Amount paid at the sale.

Q. What was the total amount?

A. The total amount occurred later, because Arde Bulova had $5,000 in that note, and, obviously, as a friend, I wouldn't want him to lose $4,900 on stock that subsequently came into my name. The first suggestion was, Crockwell ought to be sued for the deficiency. Then, in 1938, around that letter which was just introduced by you in connection with Mr. Lafount's redirect testimony, there was brought home again the fact that Nordblom had claims against Crockwell. So, it appeared all through that period that a lawsuit against Crockwell would be just throwing good money after bad money. So, I became obligated then to pay this $5,000.

Q. Did you pay it at a later time?

A. Yes, sir.

Q. And paid that direct to Mr. Bulova?

A. That is correct.

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Q. Then, on October 26, 1938, when this was reported to the Commission, Mr. Lafount had 400 shares, you had 200 shares, and Mr. Nordblom 400 shares?

A. That is correct. Mr. Lafount owned 400 and I owned 200.

328 Q. You two together owned 600 shares at that time out of the 1,000 voting shares?

A. That is right.

Q. Now, this 100 shares; just briefly go through it, and I am going to put your brother on the stand. He did then purchase 100 shares from Mr. Nordblom?

A. Yes, for $1,500. That was part of that $4,750 payment Mr. Lafount made to Mr. Davison for the 100 shares of B stock that my brother bought and the 100 shares of A stock that Mr. Lafount bought to complete his 1,000 shares of A stock.

Q. That 100 shares wasn't reported at the time of the purchase?

A. No.

Q. Do you know the reason for that, why that wasn't reported then?

Q. The same situation again—after 100 shares were bought from Mr. Nordblom for $1,500, he again expressed dissatisfaction with the deal.

Q. Now, with reference to payments for this very stock, I believe the testimony showed this morning that the final payment for the 300 shares of stock, at least as reported to the Commission, was some $5,000. Was there a further arrangement between you and Mr. Lafount about paying for the stock?

329 The Examiner: You refer to 300 shares. Is that the same 300 shares represented by Certificate B-3?

The Witness: The one which was mentioned in the agreement made by Mr. Fisher.

The Examiner: Certificate B-3?

Mr. Shuebruk: That is right. It was issued in Mr. Nordblom's name.

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By Mr. Fisher:

Q. Now, with references to that, were there any further arrangements or renegotiations with Mr. Lafount about payment?

Q. As I said before, the original arrangement made at about the time, or shortly after the deal, or about the time it was in consummation, I was to pay, with my brother and myself, $22,500 for 300 shares, and Mr. Lafount's portion was $30,000, because of the fact that these debts had to be paid under the agreement that Mr. Lafount had made for his 400 shares. That went along until after September, 1940, when the other 200 shares were purchased, that is, the 100 A and 100 B, when it was clearly indicated that Mr. Lafount was getting a financial advantage, because of the fact that he had 1,000 of the A stock, preference stock, which was carried on the books at $44,000.

Q. That would cost him how much?

A. $2,450.

Q. And—

320 A. Plus the $3,100. In fact, the check was for $4,750.

So, on the reshuffling of that, it added up something like this: There were $52,500 original purchase, 400 of Lafount's, and 300 of ours, my brother's and mine; in addition, there was $5,100 of the stock that I bought at auction, 200 shares of B, which I paid for to Mr. Bulova. There was $4,750—that should be $4,600—of the amount of 200 shares of A and B, and the $2,450 that Mr. Lafount paid for the 900 preference stock. That is about $64,000—$64,600. Deducting the $44,000, which is the face value of the preferred stock, that would be $20,000 remaining. My brother and I had 60 percent, providing we finally took the stock, and Mr. Lafount 40 percent. So that his share would be around $8,000, and my brother's and mine somewhere around $12,000.

Q. Do I understand this approximate amount of $12,000

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you arrived at was for the purchase of Class B stock for you and your brother?

Q. That is all of the Class B stock. That is the 600 shares. That is the 300 on the agreement which was made on March 25, 1937, the 100 that was bought from Mr. Nordblom, and the 200 that was brought at auction. And our cost was $12,000.

Q. And how did you pay for that and to whom?

331 A. I paid that to Mr. Bulova.

Q. Direct?

A. Direct, in installments.

Q. He owed Bulova and you owed Bulova on this total amount that Mr. Bulova had put up?

A. That is right.

Q. Evidently he had put up most of it?

A. You see, $12.000 total for the 600 shares. Of that twelve, I owed Mr. Bulova $5.100. That had nothing to do with Mr. Lafount's. So, Mr. Lafount's credit with Mr. Bulova on mine was about $7,000.

Q. But you owed Bulova both sums?

A. I owed Bulova $12,000, around that figure.

Q. Was that paid to Mr. Bulova?

Q. That was paid.

Q. When and how?

A. Over the period after 1937; I don't know the exact dates, but we had this running account; that is, he would ask me if I had any cash sometimes. But I know along about August, 1941—I think that is about right—I settled with him, made the final payment on this $12,000. I gave him $5,000 in cash. I asked him if he wanted a check or cash, and he said, "I will take cash."

Q. That was the final payment of the $12,000?

A. Yes. Prior to that I had given him about $7,000

332 in amounts during a period of years.

Q. And then Mr. Lafount was relieved from that amount of payment to him?

A. $7,000 he was relieved.

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Q. Then that made the total number of shares owned by each one of you how much?

A. That gave Mr. Lafount 400, me 400, and my brother 200.

Q. And that is the way it stands now?

Q. That is correct.

Q. During this time there was dispute about the 300 shares, you were not a director of the corporation at that time?

A. No, I became a director in 1941, I think.

Q. You had 200 shares in your own name by that time?

A. Yes, sir.

Q. And Mr. Nordblom continued to be a director?

A. 200 shares were reported in 1938.

Q. And Mr. Nordblom continued to be a director and stockholder at that time?

A. Yes.

Q. And you have owned 200 shares from then on?

A. Yes, sir.

Q. Are you a director of the corporation now?

A. Yes, I am a director.

333 Q. Who are the directors now?

A. Mr. Lafount, Mr. Davison, and myself.

Q. What position does your brother hold?

A. He is treasurer.

Q. Have you also acted as attorney for the station?

A. I have in New York; I mean in connection with his corporate matters and so forth.

Q. I believe it has been testified you didn't get a salary.

A. No, sir. We have received fees.

Q. You have received legal fees?

A. Yes, sir.

Mr. Fisher: I think that is all.

The Examiner: You may cross examine.

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Cross examination by Mr. Marks:

Q. Mr. Cohen, how long have you had association with the radio business?

A. In my office, since 1933.

Q. And since Mr. Bulova has been connected with radio have you represented him?

A. Yes; but not in this city before this body.

Q. Are you a member of the radio board to practice before the Federal Communications Commission?

A. I became a member and was admitted, I think,
334 in 1939 or 1940.

Q. And I assume you have read the Communications Act of 1934 as amended?

A. I think I did.

Q. And at one time or another you have seen the Rules and Regulations of this Commission?

A. Yes, sir; maybe in 1938, something like that, just about the time of this hearing in Greater New York was on.

Q. You have appeared before this Commission on other occasions representing stations affiliated with Mr. Bulova's interests?

A. Never personally appeared as counsel. I have appeared as associate.

Q. You have been entered as counsel of record for the Bulova organization?

A. In a hearing a few months ago I appeared as associated with Mr. Lohnes. That was not on radio matters. My connection with that lawsuit was involved because of one witness whom I knew, appearing here against the granting of the application, and because of my familiarity with those facts rather than with any radio law or radio rules and regulations.

Q. And you have seen the report form that the Commission uses for the reporting of information relative to stock ownership; interests in stock?

335 A. Yes.

Q. And have you ever filled any of those reports out?

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A. No.

Q. You are familiar with the requirements?

A. Just generally. I couldn't recite them to you, but I have seen them.

Q. Are you aware of Rule 43.1 of the Commission's Rules and Regulations?

A. You will have to tell me what it is.

Q. That rule requires that within 30 days after the occurrence of any event, such as change of stock ownership, that report must be filed with the Commission.

A. Yes, I heard that rule mentioned.

Q. You were familiar with that in 1937, I assume?

A. Well, I wouldn't say that I was then. I never appeared before the Federal Communications Commission until the hearing in the Greater New York matter when Mr. Bulova was acquiring—

Q. Mr. Lafount was familiar with radio before 1937 in greater detail?

A. I think it is a general assumption that he was.

Q. Is it your opinion, as a member of the radio bar, admitted to practice before this Commission, that Rule 43.1 is a substantive part of the Rules and Regulations of the Commission?

336 A. It is a rule and regulation of the Commission, and I think all rules and regulations of any body should be obeyed.

Q. Is it a rule that can be waived because of any slight occurrence?

A. That is up to the Commission.

Q. Has the Commission, since you became aware of it, ever waived Rule 43.1?

A. I don't know. I assume, so the record will be straight, that the Commission wants all of its Rules and Regulations complied with.

Q. You are familiar with Section 310 (b)?

A. Is that the one about applications on change of ownership?

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Q. Yes.

A. I have heard of that too.

Q. That rule provides in substance, does it not, that when a change occurs in a corporation holding a radio license so that the control passes to new interests, that must be reported to the Commission and its approval obtained?

A. I am adopting your interpretation.

Q. If I am wrong, correct me.

A. I am adopting your interpretation of the rule. If you say that is so, that is all right.

Q. I don't want you to agree with me, Mr. Cohen.

A. I want to agree with you, Mr. Marks.

337 Q. I want you to read Section 310 (b) of the Act. Will you read that into the record?

A. (Reading):

> "The station license required hereby, the frequency authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner, either voluntarily or involuntarily, disposed of, or indirectly by transfer of control of any corporation holding such license, to any person unless the Commission shall, after securing full information, decide that said transfers are in the public interest, and shall give its consent in writing."

Q. Now, Mr. Cohen, you have had extensive dealings with corporate matters in the general practice of law?

A. Thank you for the compliment, but I will say that I have had considerable. "Extensive" is a pretty large word.

Q. Control of a corporation is reflected in the stock ownership in one respect, is it not?

A. That is right. Of course, I can visualize cases where stock transfer would not change control.

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Q. And there are other circumstances besides stock ownership which reflect in the control of the corporation?

A. That is right.

Q. We will agree that majority interest in the stock carries with it legal control of the corporation?

338 A. Are we going to get down to the fine points? I could say, for instance, that the board of directors control a corporation. The stockholders at its annual meeting elect three members of the board of directors. The stockholders cannot control the acts of the directors until the end of their term.

Q. Without getting into a discussion of corporation law, but stockholders can always call a meeting and elect new directors?

A. Not unless the by-laws provide they can remove the directors without cause.

Q. Will you agree, in the ordinary situation the majority interest of the stock carries with it legal control of the corporation?

A. Yes, that is the usual assumption.

Q. When Mr. Lafount first approached you with reference to WORL, when was that in point of time?

A. I would say it was about the time he was negotiating for his 400.

Q. That would be about what date?

A. I couldn't tell you the date.

Q. Was it 1936?

A. It was 1937.

Q. You do know it was 1937?

339 A. You can see that by the records now. If you had asked me six months ago what month it was, I couldn't have told you.

Q. This transaction, as appears from the record, was closed March 25, 1937. How long before that did Mr. Lafount mention to you that he was interested in buying WORL?

A. I could only tell you from refreshing of my recollec-

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tion through my conversation with Mr. Lafount. I would say that was about a week ago. I haven't any record to indicate the exact date. As I said before, it was within that period before the 25th.

Q. He talked to you about buying 700 shares of the stock?

A. I don't recall whether he said 700. He talked about me participating.

Q. You testified on direct examination that he talked to you about the 400 and 300 shares, the total of 700.

A. When you say 700, you lump the two together. I said I don't know whether that is the manner in which it was done. I am giving you my best recollection, after refreshing my recollection. I say that he spoke of the 400 and whether I would be interested in participating.

Q. Yes. And he discussed with you 700 shares?

A. 400 and 300 are 700, but I don't know that he said 700.

340 Q. But he discussed three and four hundred?

A. Yes.

Q. It was contemplated those would be bought at the same time?

A. I don't know. I knew he was up there and making the deal. Whether he was going to buy it at 12 o'clock in the morning and the other at 6 o'clock at night, I didn't know. I left it entirely with him and the attorneys with him.

Q. In discussing this matter with Mr. Lafount, were you interested in buying less than 50 percent interest in this corporation?

A. I never thought of that at all.

Q. Does it make any difference to you when you invest your money whether you have more than majority of stock or less?

A. Sometimes you don't think of that. I buy shares in the stock market. I may have only one-hundredth percent of the stock in the corporation. I was interested in a

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distillery in which I didn't have majority, and yet I became president of that company, and only controlled 20 percent.

Q. Did you discuss at that time the financial condition of WORL?

A. Mr. Lafount told me what the situation was.

Q. What did he tell you?

341 A. He told me there were a great many debts that would be cleared up by payments that were made by him out of the forty-eight thousand that he was paying.

The Examiner: For 400 shares?

The Witness: Yes, sir.

By Mr. Marks:

Q. Did Mr. Lafount at that time have an agreement to purchase the 400 shares for $48,000?

A. I don't know. I wasn't up in Boston; I was in New York.

Q. What did he tell you?

A. I am giving you what he told me. There are no details that come to my mind. It was seven years ago, and I can't give you any details.

Q. As a lawyer, did he consult you about the preferences which existed with reference to the two classes of stock?

A. I don't know that he did. He had Mr. Davison up in Boston advising him, and I think Mr. Fisher was there, and I think probably it was mentioned to me after he came back, but I didn't go into details.

Q. Did he discuss with you the fact that Mr. Eynon and Mr. Phelan, who were stockholders at that time, had employment contracts, and that he wanted them terminated?

A. No, I don't recall that he did. The names 342 Eynon and Phelan only come back to me after I examine all these books.

Q. Did he discuss with you the fact that he was to be-

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come president of the corporation and that the existing officers were to resign and new ones were to take their places?

A. He probably mentioned that during that period, or on the telephone when he spoke to me about it. I wouldn't want to recall every detail. I am trying to give you the best recollection I have, after refreshing my recollection with all these papers that only came forward within the past few months.

Q. We have been talking about this case more than two months, during which time we have discussed correspondence and asked for records.

A. September 6 you asked me about some records.

Q. And before that time, for more than a month, we have discussed getting these records you have now produced.

A. Sometime in August.

I refreshed my recollection after the Select Committee hearing.

Q. Did Mr. Lafount also tell you that he wanted to fire the existing manager of WORL and replace him with someone of his own choosing?

A. He may have mentioned it, but that is a detail
343 I would leave to Mr. Lafount's judgment. Of course, he probably discussed it with me and said he intended to put in new management, and I said, "Go ahead."

Q. In your opinion, Mr. Cohen, wasn't it contemplated that there would be a wholesale change in the way this station was running, in its financial set-up, and in the parties who were interested in the stock?

A. I was of the belief that the station would be cleaned.

Q. Didn't you tell him that you were only interested in obtaining a controlling interest together with him?

A. No; that would follow, that if he and I had 709 shares together and we agreed on policy, then we controlled it; if we disagreed, then we didn't control it.

Q. You were interested in the controlling interest?

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A. I would rather be in business with a man I know rather than a man I didn't know.

Q. It was your desire to get controlling interest?

A. I don't say it was desire.

Q. Didn't Lafount tell you he could get a controlling interest in this station for $52,500?

A. He mentioned the fact, as I told you before, that would be 400 for himself and 300 for me.

Q. You testified to that before. I am asking you now, didn't Lafount tell you he could get controlling
344 interest in the station for $52,500?

A. I can only say that might be the natural interpretation, but at the time there was this 400 and 300 mentioned.

Q. Was price discussed when you first talked to Mr. Lafount, the amount he was going to pay for these 700 shares?

A. I can say now it was.

Q. What was the total price involved?

A. $52,500.

Q. What part of that were you to pay?

A. The 300, according to the agreement, was $4,500.

Q. I am talking about this first meeting.

A. It was that arrangement, our share was $22,500 and his was $30,000.

Q. This was the first time you discussed it before the transaction?

A. I don't say it was the first time.

Q. Let me complete my question, Mr. Cohen.

This is the first time you discussed, or one of the times you discussed, prior to the time of completion of the deal on March 25?

A. I don't know, because I wasn't there when Mr. Lafount signed agreement. He may have spoken to me on the 23rd of March, and he may have spoken to me on the 24th of March.

345 Q. You don't listen to my question. I think we will save time if you will listen carefully. At this meeting

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when you and Lafount met for the first time to discuss this, or any subsequent time, prior to March 25, 1937, that is the meeting we are talking about. Now, on that occasion, or on any one of those occasions, was the price of $52,500 discussed?

A. I would assume it was discussed around that time.

Q. Was it agreed you would pay a pro rata share based upon your purchase of 300 shares and his of 400?

A. Yes. Mr. Lafount called my attention to the disparity in the second agreement, and I said, "O. K. I will, of course, contribute the proportionate share toward the payment of the debts."

Q. So, there had been a contract, an agreement, to buy 300 shares for $4,500, and an agreement to buy 400 for $48,000, making a total of $52,500?

A. That is right.

Q. Do you know whether Mr. Lafount's agreement to that was reduced to writing for the purchase of 300 shares—we are talking about your stock—for $4,500?

A. I have seen the agreement Mr. Fisher had.

Q. That is dated March 25, 1937. I am interested in knowing whether there were any previous agreements.

A. I don't know of any other agreement. That is
346 what we are talking about—1937.

Q. Didn't you just tell me you discussed this with Mr. Lafount before the sale was made?

A. I said on or about that time. I started to tell you whether it was the 23rd, 24th, or 25th, or 26th of March. In New York I didn't know whether the agreement was going to be signed on the 25th or 26th. I can only generalize with you as to probable times, because I made no record of time. I can't be expected to remember whether agreement was signed on the 25th that I had nothing to do with. Even if I had something to do with it, I might not remember it now. That has been seven years ago.

Don't misunderstand me; I am just trying to be frank.

BLEED THROUGH

Q. Mr. Cohen, I am not trying to make it difficult for you. All I want, and all the Commission wants, is the facts to the best of your recollection, and if you give us that, there won't be any dispute between us.

A. I know the situation.

Q. Now, prior to March 25, 1937, that is, prior to the time the transaction was closed, did you authorize Mr. Lafount to buy for you 300 shares, or any other amount of shares, in WORL?

A. Yes.

Q. Did you specifically authorize him to buy a specific number of shares?

347 A. I said, "Go ahead and get the 300," which he said he could get.

Q. And you told him you were willing to pay $22,500?

A. He told me it was $4,500, and I told him we would make the adjustment, and that is what it amounted to afterwards. Whether I told him on March 25, I don't know. I can't give you that information definitely.

Q. All right. So this agreement was all understood between you and Mr. Lafount before he went up to Boston to close the transaction, that he was to buy 300 for you and you would pay him the pro rata share of the total purchase price?

A. I didn't say that. If that is the indication, there is a misunderstanding. I said somewhere along that time; around that or afterwards. I said my proportionate share would be $22,500, because I didn't want him to hold the bag, because obviously—

Q. When you buy stock, aren't you interested in purchase price?

A. Certainly.

Q. Did you know what the purchase price was to be before you told him to buy the 300 shares?

A. Well, it was $4,500.

Q. Is that what you were intending to pay for it?

-FCOR COPY

A. No; I expected, when he was buying the other 400, that there would be some discussion about this allocation.

348 Q. You knew you were going to pay more than $4,500 for these 300?

A. I thought that would be the fair thing to do, in my own mind.

Q. It was a simple matter for you to figure out, since he was paying $48,000 for 400, and since the 300 was bought for $4,500, that your pro rata share would be $22,500?

A. I can't say that, because I didn't know what the debts were and I didn't know just what other commitments.

Q. What did the debts of the corporation have to do with this purchase of stock?

A. I didn't know what other commitments he was going to make up there. I didn't find the whole deal out until he came back.

Q. You told us he said he was going to pay $48,000, out of which all the debts would be paid?

A. That is right.

Q. What do the debts of the corporation have to do with your total and his total?

A. I said I didn't know what commitments—

Q. Did he tell you about any commitments?

A. No.

Q. Were there any other commitments?

A. Yes, sir.

Q. Then, the only contracts in existence—

349 Mr. Fisher: This is very argumentative. I don't object to the question, but I certainly object to this argument going on all the time.

The Examiner: Try to refrain from argument.

By Mr. Marks:

Q. Why was it necessary to have a separate contract between Mr. Fisher and Mr. Nordblom for the purchase of the 300 shares?

BLEED THROUGH-

A. I don't know; I had nothing to do with it.

Q. The stock could have been bought and the certificates obtained—

A. (Interposing) I don't know. A hundred things could have happened instead of what did happen.

Q. Who was Mr. Fisher acting for?

A. I assume for Mr. Lafount. Later, of course, when he made that agreement, he was acting for me, because Mr. Lafount told them to sign a contract for me.

Q. Did you authorize Mr. Fisher before March 25, 1937, to enter into this contract on your behalf?

A. I had no conversation with Mr. Fisher about it, but an agent can act through another if necessary, and that is what turned out.

Q. Now, we are past March 25; we are past the sale; the deal has been closed.

A. That is right.

350 Q. I assume Mr. Lafount came back to New York and he called on you and said that he had bought 700 shares, 300 of which were for your account?

A. That is right.

Q. And he showed you the temporary certificate that he got?

A. No, sir.

Q. Have you ever seen the temporary certificate?

A. I saw them.

Q. When?

A. I may have seen them then, but I certainly saw them recently.

Q. Did you examine the temporary certificates?

A. No.

Q. Weren't you interested in getting anything at all to show you owned 300 shares?

A. Later, in April, I got that. I don't know when these temporary certificates came to New York. To save time, I don't recall seeing those temporary certificates at all right now.

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Q. Did you ask about them?

A. No.

Q. Aren't you interested in any manner in finding out what your investment is? Weren't you interested in getting some proof you owned these 300 shares?

351 A. Only a month elapsed, and the certificates arrived.

Q. Then the permanent certificates arrived in April, 1937; to be specific, May 1?

A. That is right.

Q. Did you see the certificates then?

A. Yes.

Q. And you examined them?

A. I looked at them.

Q. And did you find a certificate in your name?

A. No.

Q. Did you ask about that?

A. No.

Q. Weren't you interested?

A. No; the certificates were endorsed in blank; they were negotiable as they were.

Q. You could have gone out and sold those 300 shares if you had wanted to?

A. Yes, sir. I could have transferred them to your name, or anybody's name in this office, provided you consented to it. I didn't have to put my name there.

Q. Do you remember 43.1 of the Commission's Rules and Regulations?

A. No.

Q. I will refresh your memory by calling your attention to the fact that Rule 43.1 provides that within 30

352 days after the transfer of stock, that that shall be reported to the Commission.

A. But I was not familiar with it in 1937.

Q. Did your attorney, Mr. Fisher, advise you of the Commission's Rules and Regulations in this respect?

A. I don't recall.

BLEED THROUGH

Q. Did you ask for his advice?

A. I don't recall.

Q. Do you remember when Mr. Lafount filed his report with this Commission about his 400 shares?

A. I don't.

Q. Didn't he tell you about that?

A. I don't recall it.

Q. Didn't you make any inquiry if the Commission had been told about this transaction?

A. No.

Mr. Fisher: This cross examination doesn't get us anywhere.

Mr. Marks: It may be embarrassing.

Mr. Fisher: It is not embarrassing.

The Examiner: Are you objecting to any question?

Mr. Fisher: I object to this whole line of testimony. It is argumentative.

The Examiner: I thought the purpose of cross examination was to ask questions.

353 Mr. Fisher: Questions dealing with the examination, yes.

The Examiner: Just a blanket objection, I can't pass on.

Mr. Marks: I am going to move on to another point.

By Mr. Marks:

Q. Now, after May, 1937, I believe you testified Mr. Lafount told you that Mr. Crockwell was asserting some kind of a claim?

A. Yes. I don't know whether it was after May or not. I wouldn't be specific about any month; it was within a short period after.

Q. On direct examination you said after you received permanent certificates—

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A. I said after I received certificates. I may have said after the deal was closed. I don't think I mentioned certificates at all.

Q. I specifically noted that. Do you say that is an error?

A. It may be. I am saying it was after he came back from Boston; sometime after that.

Q. What did he tell you about the Crockwell claim?

A. He said that Crockwell had made some claim that Nordblom was not satisfied with the deal in connection with the 300 shares.

Q. And did he say that Mr. Crockwell was going
354 to file a suit or ask that the transaction be rescinded?

A. I can only tell you that my transaction be rescinded? A. I can only tell you that my conclusion was that there may be, let's put it, frailties to the 300 shares that should receive our consideration.

Q. Why the 300 shares?

A. Because that was involved in those 300 I received.

Q. What about the 400, were the frailties also present in those?

A. I don't know. That had already been transferred to Mr. Lafount's name.

Q. These certificates in your possession were transferred in blank?

A. Yes.

Q. You could have put them in your name, you just told me?

A. Sure, I could, but I didn't want to.

Q. Will you tell us why you didn't want to?

A. I told you why, because there were these objections made in connection with the dissatisfaction of Mr. Nordblom. I didn't know whether he was going to make any claim for the stock back, and I didn't want any lawsuit.

Q. As a lawyer, and as a business man, when you buy stock, what has been your experience with reference to the purchase of stock when a claim is asserted against it?

BLEED THROUGH-F

A. I can't give you a general custom. I was per-
355 sonally involved in this. Perhaps if I had a client who was sitting along beside me, I might have said to him, "To hell with it; take the stock and put it in your own name," but I was personally involved, and maybe we are more circumspect when it involves us.

Q. Did you receive any correspondence from Mr. Crockwell saying, to the effect, that since you bought my 300 shares, and I am dissatisfied, and I want the transaction rescinded?

A. All I received was the information from Mr. Lafount, and I relied on that.

Q. And these weren't Crockwell's shares, were they?

A. They were Nordblom's shares.

Q. Did Mr. Nordblom complain to you?

A. I had never met Mr. Nordblom.

Q. Had he written to you?

A. No.

Q. His lawyer, I believe, was Mr. Davison?

A. Yes.

Q. And you knew Mr. Davison?

A. Yes, sir.

Q. And did Mr. Davison write you about this claim?

A. No.

Q. Other than Mr. Lafount's vague reference to a claim, you knew nothing about it?

356 A. No; but that was enough for me.

Q. Did you tell Lafount that you were out of the deal?

A. I told him I wasn't going to make the transfer.

Q. Then, you made no arrangements, of course, about paying him any money because you were out of the transfer?

A. Of course I did. I said I would be responsible, and, as I told you before, I wasn't going to let Mr. Lafount hold the bag for me.

Q. You were responsible for the purchase price?

A. Of course; I told Mr. Lafount I would pay. I also

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said that if Mr. Nordblom ever insisted on his stock back, that I naturally would insist that he pay me back the money which he allegedly was supposed to have gotten. He couldn't demand the stock without paying the money back.

Q. Somebody was out $22,500 on your account?

A. That is right.

Q. Did you take any steps at all to reimburse?

A. Nobody was out.

Q. If the stock wasn't valid—

A. We are dealing in problematical things. Nothing happened. We meet those situations as we come to them.

Q. As the years went by, nothing happened?

A. It got worse.

Q. When did it get worse?

A. In 1939 when Mr. Crockwell asserted that Miss
357 Whitwell was in this picture.

Q. You were sued for that?

A. The corporation was sued in connection with a transaction which involved Miss Whitwell.

Q. That involved the 300 shares?

A. The suit didn't mention the 300 shares. It was a suit involving some moneys that Miss Whitwell claimed that the corporation owed her because of moneys that Crockwell misappropriated.

Q. It had nothing to do with the 300?

A. That is not what the claim was. That is one additional matter.

Q. If an employee who hadn't been paid had sued the corporation, would it also have affected your 300 shares?

A. That has nothing to do with that. You are picking out a case that doesn't apply. Here we get in 1939 a letter from Mr. Crockwell in which he specifically says, for instance, a stock was claimed by Miss Whitwell, and even went so far as to say that Mr. Lafount knew that she owned that stock, when Mr. Lafount had bought it at auction. Later we get this letter from Mr. Hines himself, in which

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Mr. Hines made a claim not only for the A stock but the B stock.

And I want to say this further in justice to the whole situation. It is only recently that I read the minutes
358 of the Select Committee where Mr. Hines gave testimony in which he accused this Commission of not giving him information about the Broadcasting Service matter.

Mr. Marks: Your Honor, I object to this statement, which has nothing to do with this matter.

The Examiner: The witness must answer questions, and if there is anything that needs to be developed, the applicant's counsel can do that on redirect.

(At this point a short recess was had, following which the proceedings were resumed.)

The Examiner: Gentlemen, are you ready to proceed?

Mr. Marks: Yes.

The Examiner: Mr. Reporter, I think we stopped right at the point where the witness had started to make a statement about the congressional investigation, of what someone stated up there, and objection was raised, and I made the comment there that the witness must answer questions, and if there was anything needed to be developed, the applicant's counsel could do that on redirect.

Mr. Marks: Since the recess, Mr. Examiner, the witness has pointed out to me the portion to which he refers, and if he wishes at this time to make a simple statement about the material involved, I have no objection. The only objection I had was to making a long speech about the general testimony.

The Witness: I was referring to a statement made
359 by this attorney, Hines, before the Select Committee on December 15, 1943.

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The Examiner: Is he an attorney for the committee?

The Witness: He was a witness for Miss Whitwell. He responded to a question by Congressman Hart in which it appears that Attorney Hines contended that there was fraud in connection with the transfers of the stock, and specifically mentions Mr. Lafount on that date as having had knowledge of the fact that a thousand shares of A stock belonged to Miss Whitwell, and claims that he still has in reserve possible civil or criminal proceedings in connection with the Whitwell-Crockwell dealing.

I only make that statement in support of the fact there was some controversy, and claims by Hines on behalf of Whitwell, over the period, which was first called to our attention some time prior to 1939.

The Examiner: All right, proceed.

By Mr. Marks:

Q. As you said, this was a thousand shares of A stock which was valued at $44,000 after Mr. Lafount came in. It was scaled down from 100 to 44 thousand.

A. That was one of the things mentioned by Mr. Hines. As you read the whole testimony, you will see the claim that the whole transaction, even before we got into the deal—

you will see where he speaks of money being extracted
360 from Vault by Crockwell. May I add this?

Q. Yes.

A. I may have been wrong in my judgment in not reporting the 300 shares, or in not making the transfer in my name. It may have been poor judgment. Perhaps now I would change that situation. I don't say I am right, but I say if it was a mistake, it was a mistake that was not in bad faith. I had no desire to have my name on the stock and have lawsuits against it.

Q. If you had reported the 300 shares with the 400

BLEED THROUGH

shares of Mr. Lafount's, that would have shown the Commission that a majority of the stock had been transferred on that occasion.

A. Well, yes; but it learned later. It learned later that it was 400 and 200. In 1938 the Commission knew Mr. Lafount had 400 and I had 200. The most it would have learned the year before is that I had 300 instead of 200, or that my brother had 100 and I had 200. I am not trying to argue; I am trying to set the facts.

Q. Had that 700 shares been disclosed to the Commission, you would have had to file application for transfer of control.

A. I think by the same token we should have filed it as far as the 200 was concerned.

Q. We will get into that, Mr. Cohen. You would
361 have had to file an application for the transfer of control?

A. I don't know.

Mr. Fisher: That is his interpretation.

Mr. Marks: I am asking if he would have.

The Witness: I am saying this, that I don't know. In my opinion, as I said to the Select Committee, that there was no reason, or I said I was doubtful under the facts in this case, that an application for a transfer would have to be made.

By Mr. Marks:

Q. Do you think the Commission should have been told that all this money for the purchase of 700 shares of stock was Mr. Bulova's money?

A. No.

Q. You don't think the Commission should have legitimately known that?

A. It was a loan on no security. If I go out and borrow money to buy stock and don't give the certificate as security, I don't think, as a matter of law, that the Com-

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mission is interested as long as I am otherwise qualified and have the funds necessary to support the station, and I did have, and have now. I think I could qualify before this Commission as a stockholder in any radio station.

Q. Nothing that I say is intended to imply that you would not be qualified. I am merely asking whether
362 the Commission had a legitimate interest in knowing Mr. Bulova's money bought this station.

A. It wasn't his money.

Q. It was his money.

A. I disagree with you as a matter of fact and law.

Q. When did your money come into this station?

A. When I agreed with Mr. Lafount to reimburse him.

Q. When was that?

A. When I told him to buy the 300 shares for us. That may have been at the same time that Mr. Bulova loaned him the money.

Q. When did you actually put out any cash in connection with the purchase of the 300 shares?

A. When I started paying Mr. Bulova for Mr. Lafount.

Q. When was that?

A. It was over a period of time.

Q. When was the first payment?

A. I would say my first payment may have been sometime within a year. It wasn't really a payment, because it was funds he would ask me for. I may have given him one thousand or two thousand at a time.

Q. When you gave him one thousand or two thousand you would say, "Mr. Bulova, this is on account"?

A. When he would ask me, I would make a note on a slip of paper, and when the time came in 1941, when
363 I felt the deal should be cleaned up, I went to him and said, "Here, I gave you this much and I can give you the balance," and we settled that.

Q. You cleaned up this thing in 1941?

A. Yes.

Q. But you didn't report it then?

BLEED THROUGH

A. No, the money was loaned. No matter what was loaned, there was the obligation to pay it.

Q. Did Mr. Bulova know you were buying 300 shares?

A. Sure.

Q. Did you have a conversation?

A. Sure.

Q. What was the conversation?

A. I told him, after Mr. Lafount had talked to me—Mr. Lafount had told me he had spoken to Mr. Bulova. I told Mr. Bulova my conversation with Mr. Lafount and I told him that I was participating and taking these 300 shares, and he said, "Go ahead, more power to you."

Q. Was that put on his records, that you owed him $22,500?

A. Not necessarily, between him and me.

Q. Do you think he remembered the situation?

A. I hope he did. It didn't make any difference, because I had power of attorney. If he goes to Europe, I have power of attorney to sign his checks. I can do
364 almost anything with his money.

Q. You paid him the first installment about a year after the transaction?

A. Somewhere between there, there were amounts given by me to him.

Q. How much was the first repayment?

A. All I know is that along in the summer of 1941 I had already given him about $7,000.

Q. How do you know that, Mr. Cohen?

A. Because I know I recall I gave him about $5,000 to finish up the deal.

Q. How do you know that in 1941 you had given him $7,000?

A. Because I gave him before I was flying to California on vacation—

Q. How much?

A. About five thousand.

Q. How did you give it to him?

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A. Forty-nine hundred in cash.

Q. Did you withdraw the money from the bank?

A. It was drawn from our firm account.

Q. Do you have a check for that amount?

A. I do. I didn't draw only five; I drew ten. I was going to California with my family.

Q. You now have those checks?

365 A. Yes.

Q. Can you give me the date?

A. I think one is August 15 and one is August 19.

Q. August 15, 1941, for $5,000?

A. Right.

Q. And August 19, 1941, for $5,000?

A. Right. He didn't get them both. When I drew the one, I decided I ought to settle before I go to California. I said, "I can dispose of that." So, he says, "O.K." I told him that I had cash because I had drawn money out for my California trip, and put some of it in the vault.

366 Q. You paid Bulova $5,000?

A. Yes. And when I gave him that I had to draw another five on the 19th so I would have money.

Q. Just so I understand you, you paid Mr. Bulova $5,000 in cash on August 15, 1941, prior to your taking a trip to California?

A. With my family, that is right; my wife and two children.

Q. Before that time had you paid him any amounts of money?

A. Another reason is I was flying.

Q. That is very good. Will you let me finish the question before you answer?

A. Pardon me.

Q. Before August 15, 1941, had you paid him any amounts of money with reference to the purchase of 300 shares of WORL stock?

A. I said at that time about $7,000 had been paid.

BLEED THROUGH-I

Q. When was that $7,000 paid?

A. During the period along the end of 1937; during 1938 and over that period.

Q. Were they paid in installments?

A. Yes.

Q. How much was each installment?

A. I can't give you the dates on that.

367 Q. How do you know it was $7,000?

A. Because I had a slip of paper on which I indicated what the amounts were, the total, and I went to him and said, "Artie, I am going to California, I am flying, and this thing ought to be disposed of. I can give you a check, or do you want cash?" He said, "Can you give me the cash?" And I said, "Yes." I had the $5,000 in my pocket because I was leaving for California.

Q. Didn't Mr. Bulova make records of loans he received?

A. I don't know.

Q. You, as an attorney for him, should know.

A. Not that I know of. He relied on my judgment.

Q. He didn't maintain records for income tax purposes?

A. He wasn't getting any interest on this.

Q. I am merely asking if he keeps financial records.

A. He probably does for matters that concern income. This isn't income.

Q. Mr. Bulova is a man of means and I assume he keeps track of his dealings.

A. I know in this matter he didn't keep any records. If he did, I don't know of it. He may have had a record of it. It may have been on a piece of paper like mine.

I will tell you another thing, so you will know how my transactions are. On last Saturday I handed him $500 in cash at his request because he was short and had no cash, and I made a record of that on a piece of paper. When

368 he gives it back to me I will tear the piece of paper up. I have that record if you want to see it. There is a very close relationship between us.

Q. Have you finished that?

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A. I am sorry.

Q. I would like to start on another, if I may.

I believe, then, you testified you paid a total, between yourself and Bulova, of $12,000 for $600 shares of B stock of WORL?

A. That is correct.

Q. $5,100 of that was paid to Mr. Bulova when you bought the 200 shares at the auction?

A. That is right. I didn't pay it at that time.

Q. I mean the total amount paid was $5,100 for 200 shares?

A. That is right.

Q. That would be approximately $25 a share?

A. Yes.

Q. That would leave, then, $7,000 paid to Mr. Lafount for 400 shares?

A. That is right.

Q. Now, there is a rather wide discrepancy, isn't there, between paying $7,000 for 400 shares and $5,100 for 200?

A. No.

369 Q. Would you like to explain it?

A. That is the adjustment for the entire transaction. I can go on the market and buy 500 shares and next week have to pay $20 for it.

Q. Had the value of the stock changed in the meantime?

A. It is a case of adjusting in connection with the entire transaction.

Q. Has Mr. Lafount expressed dissatisfaction for receiving disproportionately less than Mr. Bulova for the shares he bought?

A. No.

Q. He is satisfied with it?

A. It was a case of making Mr. Bulova whole what he paid to Crockwell, $5100.

Q. That is your explanation of the discrepancy?

A. That is a fact.

Q. I just wanted your views on it. There were several

BLEED THROUGH-P

suits against station WORL by Miss Whitwell. Have you had occasion to check the facts and do you know how many suits were filed against WORL?

A. Well, only one; but there were other suits involved during the prior administration. I think one was by a lady by the name of Proctor, which Mr. Davison handled.

Q. How much was Mrs. Proctor's claim, a couple of hundred dollars?

370 A. Maybe $750.

Q. Were there other suits?

A. I think there was another suit. There may have been one other suit.

Q. How much was that other for?

A. I don't recall.

Q. Was it large or small?

A. I think it is small.

Q. Was it an employee who had not been paid?

A. I think so.

Q. Let's take up these three suits. How much was the claim in the Whitwell suit?

A. The claim in the Whitwell suit was between three and four thousand dollars, somewhere in those figures.

Q. Did the Whitwell suit involve an action in equity for the return of the stock, either the 300 shares of B or the 400 shares that Mr. Lafount took in his name?

A. No.

Q. Was any such suit ever filed?

A. Not up to this point.

Q. Did the Proctor suit have anything to do with either the 400 shares in Mr. Lafount's name or the 300 shares in your name?

A. I don't think so.

Q. Did the suit for a couple of hundred dollars by

371 an employee for salary have anything to do with the 400 or 300? As I said before, the suit for three or four thousand dollars was the only suit Mr. Hines brought at that time; but it didn't settle fully the idea that Mr.

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Hines had in mind as to his claim for all the stock, as he said in his letter in 1941, and which I say he reasserts as late as December, 1943.

Q. Let's get back to the Nordblom claim by way of Crockwell. Mr. Crockwell was not a member of the bar, was he?

A. I don't think so.

Q. He didn't represent Mr. Nordblom, did he?

A. I only met Mr. Crockwell once. So, in order to save time, as I told you before, whatever I learned about that I learned from Mr. Lafount.

Q. Nordblom had a claim against Crockwell, did he not?

A. I would assume that from what I have seen and from what I have heard that that is true.

Q. And that claim arose out of a contract which the two of them had entered into on March 16, 1937, which has been introduced in evidence as Commission's Exhibit No. 3.

A. I don't know; it wasn't particularized to me.

Q. It wasn't a serious claim in any event, unless suit would have been brought?

A. It looked serious.

Q. Suit was never brought?

372 A. That doesn't mean the claim wasn't serious. As the years went by nothing was done until this lawsuit was filed in 1942, which turned out to be a lawsuit for money.

Q. But the 1942 suit was by Whitwell and not Crockwell and not Nordblom?

A. That is true.

Q. As a lawyer, do you think that Mr. Nordblom would have any claim against 300 shares of stock sold to Mr. Fisher, for which he had been paid, for which he made no written claim to you, for which he made no oral claim to you, for which he had received the consideration, and the stock certificate having been endorsed in blank and transferred to you?

BLEED THROUGH

A. In my experience as a lawyer, I would say I wouldn't pass on that unless I knew all the facts that Mr. Nordblom had in mind. I have already cases where a man—

Q. (Interposing) You have answered. Now, you allowed this certificate for 300 shares to remain in the name of Nordblom?

A. That is right.

Q. Did you ever make any inquiries about who was voting that stock?

A. Well, I understood Mr. Nordblom was voting it.

Q. Didn't you ever vote it?

A. The stock?

Q. Yes.

373 A. I voted the 200 shares.

Q. Did you ever vote the 300?

A. No.

Q. Did you ever attend directors' meetings?

A. No; there were only three directors' meetings I could have attended.

Q. You never attended any of them?

A. No.

Q. Did you ever attend stockholders' meetings?

A. No; I gave Mr. Lafount proxies.

Q. Did you have very much to do with the running of WORL?

A. Only conferences with Mr. Lafount.

Q. How frequent were those conferences?

A. I don't know. Maybe he would come in and talk to me about other matters and WORL was mentioned.

Q. Did he consult you on the policy?

A. Occasionally.

Q. Consult you on paying dividends out of the corporation?

A. Well, that we knew.

Q. Were there any dividends paid?

A. No, never.

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Q. Did he consult you on the amount of salary that was to be paid?

374 A. He mentioned it.

Q. When the salary was raised he asked you about it?

A. He mentioned it and I said, "O.K." I try not to argue about money.

Q. Was there ever any question about the fact that between you and Lafount that station was in your joint control?

A. I may not want to put it that way. I would say that if Mr. Lafount and I voted together we controlled it.

Q. I am asking you about the fact and not hypotheses.

A. I wouldn't say that.

Q. Under whose control was it?

A. I said if Mr. Lafount and I voted together we had control.

Q. Since 1937

A. We have not voted opposite each other. I hope we never do, but we may, I don't know. We may disagree and come to agreement on something.

Q. As a matter of fact, you never voted?

A. No.

Q. Has your brother George ever voted?

A. He wasn't a director.

Q. He was part owner of the 300 shares.

A. He couldn't vote until he got the 100 shares later.

Q. He was part owner of the 300 shares.

375 A. It wasn't in his name. I couldn't vote the Nordblom stock. The record shows that Nordblom voted it. We couldn't vote it twice.

The Examiner: Just a minute. I don't exactly recall any evidence in this record that Mr. Nordblom ever voted that stock.

The Witness: According to the minutes, he was present at the meeting of the stockholders, and it was noted that he was there with 400 shares.

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The Examiner: There is no evidence that anybody voted.

The Witness: That is right, but it is a fair assumption.

The Examiner: We are trying to deal with facts and not with assumptions.

Mr. Fisher: He voted the stock. He was present at the meetings. The minutes of 1940, 1941 and 1942 showed him present.

The Examiner: As I remember, it shows him present but it doesn't show that he voted the stock.

Mr. Fisher: The legal presumption is that if you are present you vote your stock. I never heard of any other rule. There couldn't be any other rule. What is he there for?

The Examiner: I don't think there is any legal assumption.

Mr. Fisher: What is he present there for?

The Examiner: Just a moment. I am only interested in trying to keep this record straight and get the facts, and the witness stated that he voted
376 stock, and I asked where in this particular record is the evidence he voted.

Mr. Marks: I am going to object to any further statement by Mr. Fisher on the record. You will have a chance to examine this witness on redirect.

The Witness: The Examiner asked me where the evidence was that Mr. Nordblom voted. I am looking at the minutes of the special meeting of stockholders on January 22, 1942, at which this extract appears:

"There were present in person the following stockholders representing the number of Class B Shares set opposite their names, to-wit: Robert C. Nordblom, 400; Harold A. Lafount, 400. There was present by proxy Sanford H. Cohen, being the owner of 200 shares of Class B Stock, making

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a total of 1,000 shares present in person or by proxy, or all of the Class B Stock of the company issue outstanding and entitled to vote."

And then on the next page this is stated:

"On motion duly made and seconded it was unanimously voted to proceed by ballot to the election of a board of directors. Upon ballot the following were elected directors of the company for the ensuing fiscal year: Robert C. Nordblom, Harold A. Lafount and Robert H. Davison."

Then there were a number of other matters passed unanimously.

The Examiner: Up to this time that minute had never been read into the record.

By Mr. Marks:

377 Q. Mr. Cohen, where in the minutes you have just read does it say Mr. Nordblom voted 400 shares?

A. In my opinion—

Q. (Interposing) I am asking you to show me in the minutes where it said Mr. Nordblom voted 400 shares.

A. I wouldn't prepare minutes in any other way than this.

Q. I am not asking you about the preparation of the minutes. I am asking where in the minutes there is any mention that Mr. Nordblom voted 400 shares.

A. Right here where it says unanimously.

Q. Unanimously can mean 400 A shares?

A. It can't be unanimous if 1,000 shares are present.

Q. Mr. Fisher may get a chance to bring that out if he cares to. So far as I am concerned, I will object to any further statement by you on that.

Q. Have you ever been in a corporation before where you owned stock, had a stock certificate, paid for it, or at least obligated yourself to pay for it, and allowed a stranger without a proxy to vote your stock?

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A. I never had a situation where a purchase of stock was intended to be made and where claims like this arose. So, I can't give you an opinion on it. Maybe I was legally wrong. I have been wrong before. The courts have kicked me around too. But there was no intention, I might
378 add, to deceive the Commission or anyone else.

You may have answered this before, Mr. Cohen, but your financial transactions are so involved, frankly, I am in the dark, and I would appreciate the courtesy of your explaining again the total amount that you have paid for the 600 shares that you and your brother George Cohen have.

A. $12,000. It may have been $11,800, but $12,000 is my best recollection at this time. That includes the shares that were bought at auction.

Q. We have just agreed that your testimony is that 300 shares originally purchased cost you $7,000. Am I correct?

A. No, you are not correct, because that also includes the 100 shares that my brother bought from Nordblom.

Q. It is 400 instead of 300?

A. That is right.

Q. The original 300, plus the 100 later bought by your brother for $1,500, making a total of 400 shares, costing you $7,000?

A. That is correct.

Q. Now, that leaves 200 shares that you subsequently bought at auction for a total of $5,100?

A. That is right.

Q. Were you familiar with the fact that Artie Bulova had advanced as a loan to Mr. Crockwell the sum of $5,000, secured by 200 shares of B stock?

379 A. I was.

Q. You knew about it at the time the loan was made?

A. At about the time.

Q. Did you underwrite that loan?

A. No.

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Q. Anybody underwrite that loan?

A. I think Mr. Lafount told me he had asked Mr. Bulova to make the loan and he told Mr. Bulova that if anything happens, "I will take care of it."

Q. You subsequently found out about the foreclosure sale?

A. I did more than that. We wrote Crockwell about it.

Q. Your law firm?

A. Yes. And we demanded payment, and he asked for an extension.

Q. And he was turned down?

A. I think that he got one or two extensions.

Q. Did you forward the claim to Mr. Davison in Boston for foreclosure?

A. I don't recall just how that got there. I told Mr. Lafount that Mr. Bulova wanted to press the matter, or Mr. Lafount may have found that out from Mr. Bulova himself; I don't know. At this time I don't recollect.

Q. When did you go on your vacation in 1938?

A. I don't recall exactly. I think it was some time in July.

380 Q. In July?

A. Yes.

Q. And before you went on your vacation were you familiar with the fact that the sale was going to be held?

A. Yes.

Q. And had you issued instructions as to how it should be conducted?

A. I told Mr. Lafount that I would buy that stock if it was sold at auction, and anyhow that is how it turned out.

Q. When did you get back from your vacation?

A. I don't recall. It may have been in September. Again, I was in California. I think in 1938 I was in California also with my family.

Q. And upon your return you found that the stock had been sold, purchased by Mr. Bulova?

A. Yes, sir; in his name.

Q. $100 was paid for that?

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A. That is right.

Q. Who got that $100?

A. Bulova got it.

Q. That naturally follows since he was the creditor and the creditor gets the proceeds of the auction, I believe?

A. That is right. But there were expenses in the sale; and legal fees in connection with it. I think that is how it worked out. We figured it was $5,100.

381 Q. You had a claim for a deficiency against Mr. Crockwell?

A. That is right.

Q. Did Mr. Crockwell get the $100 that was paid at the auction?

A. I don't know. It went to the auctioneer. That is, naturally it would have to go to the man who had the indebtedness.

Q. Sure, it would go to Mr. Bulova.

A. Sure, that is what I said.

Q. Now, I show you Commission's Exhibit 22, which is the report filed by the licensee on Form No. 730, showing the transaction whereby you became the purchaser of these 200 shares that we have discussed, and I call your attention to the first block which is headed "Stock Relinquished or Sold, One Stockholder to Another," and there is a column there for the name of the stockholder who had relinquished the stock and what is written in that block as the name of the seller?

A. George A. Crockwell, 200 shares of Class B stock, certificate number B-1 and 2 for 100 shares each. No par value, amount received $100, September 30, 1938.

Q. This shows Mr. Crockwell sold his stock to you for $100. That wasn't true, was it?

A. That is what was paid by me.

Q. It says, "Amount received."

A. He gets $100 credit. That is why that is in

382 there. He is entitled to $100 credit.

Q. How much did the 200 shares cost you?

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A. I didn't have to pay anything until I saw and Mr. Bulova saw that there was no chance of collecting anything in addition from Mr. Crockwell.

Q. Let's take the next block which shows the name of the purchaser. Will you tell us what is in that block?

A. There appears the name of the transferee, Sanford H. Cohen, and the amount paid $100, September 30, 1938.

Q. You paid more than $100 for the shares, didn't you?

A. Not at the time the report was made out.

Q. You mean then that Artie Bulova had agreed to allow you to keep these 200 shares for just $100?

A. It wasn't a case of agreement. Suppose we recovered from Crockwell $4,900 and Mr. Bulova got that money. I am sure he wouldn't want me to pay him $5,000 again and get $10,000 for those shares.

Q. Don't you think it would have been proper to report to the Commission the entire transaction?

A. It didn't occur to me at the time.

Q. Does this report reflect the actual consideration for the sale of the 200 shares?

A. At the time, yes.

Q. You did assume to pay $5,000 if it were not recovered from Crockwell?

383 A. If and when it was found there was no opportunity or chance of recovering the deficiency.

Q. Why do you think the Commission asks for the amount of the consideration?

A. Maybe it was an error in judgment. Maybe the Commission should have known all of that, but I think I was answering the questions in good faith. That is all I paid, $100.

Mr. Marks: I have no further questions.

Mr. Fisher: Your Honor, the only thing I can think of on redirect is this matter of voting the stock at the two annual meetings that we didn't get into the record. If there is any question about whether Mr. Nordblom voted stock, I would like to refer to

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votes taken at those two annual meetings following the ones already testified to.

Mr. Marks: I think it might be helpful to the record if we offer copies of the minutes which Mr. Fisher believes relevant to the problem, without any comment.

The Examiner: Have you got copies made up?

Mr. Fisher: No.

Mr. Marks: Let's reserve exhibit numbers for the applicant.

Mr. Fisher: All right, we will reserve the next three exhibit numbers and I will make copies.

Exhibit 10 will be the minutes of 1940 stockholders meeting, and Exhibit No. 11 will be the minutes of
384 the 1941 stockholders' meeting and Exhibit 12 will be the minutes of the stockholders' meeting in 1942.

Mr. Marks: I have no objection.

The Examiner: They will be admitted and received.

(Exhibit numbers 10, 11 and 12 were reserved for the documents referred to above.)

The Examiner. Mr. Cohen. there has been a lot of conversation, questions and answers concerning the 300 shares of stock that stood for a good many years in the name of Mr. Nordblom, and represented by certificate number B-3, which was forwarded on April 30, 1937, by registered mail, to Mr. Lafount, and thereafter delivered to you; that you retained until such time the stock was broken down and issued in the name of yourself and your brother.

A. In November, 1943.

The Examiner: Now, you had 200 additional shares of Class B stock also.

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The Witness: That is right.

The Examiner: Who voted that stock?

A. I did.

The Examiner: I notice that in the minutes read into the record that you had given a proxy to Mr. Lafount to vote 200 shares.

The Witness: I think that was given at the September meeting.

385 The Examiner: That was true at all other stockholders' meetings?

The Witness: At any meeting that I didn't attend Mr. Lafount voted my shares of stock.

The Examiner: Those were separate and distinct proxies or running proxies?

The Witness: I think it was separate and distinct proxies for each meeting.

The Examiner: Was the fact that you had given these proxies reported to the Commission?

The Witness: I didn't know that was necessary.

The Examiner: I didn't ask you that.

The Witness: I would say that it wasn't.

Further cross examination by Mr. Marks:

Q. I believe you were elected director on March 18, 1941.

A. That is correct.

Q. Was that reported to the Commission?

A. I don't know. According to what I heard today, it wasn't until later. I only have the knowledge I acquired today. I think at some later date when some report was filed it was mentioned that I was director.

Q. Mr. Cohen, I made an examination of the Commission's original record, marked 310-B, which con-

386 tained all reports filed by WORL with reference to change of officers and change of stock. An examination of those records does not indicate that you have been reported as a director of this corporation.

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A. I will take your word for it.

Q. Is there any explanation you would like to make of that?

A. No, I didn't report it, because I wasn't making reports to the Federal Communications Commission for the corporation.

Q. You knew you were made director, then?

A. Certainly.

Q. You never attended any directors' meetings?

A. No. The directors' meetings were held in Boston and business kept me from attending.

Q. Wasn't this question asked before the Select Committee? "Are you a director?"

"A. I don't exactly recall."

A. Go on further.

Q. That is on page 2273.

A. I think I did say later I was a director or officer. The whole question there was vague.

Q. The question appears on 2274:

"Do you know who any other officers are?

"A. I think my brother is an officer and I think I am an officer."

387 Is that correct?

A. I probably meant I was the director.

Q. There are one or two other extracts I would like to insert in the record and have you make any explanation you desire. On page 2273 the following question appears:

"Q. How much did George pay for his stock?

"A. I don't know. I can check that and send it to you.

"Q. Do you know how you happened to get interested in this station?

"A. Through Mr. Lafount.

"Q. What did he say?

"A. Mr. Lafount, as I understood it, or recall, said we could obtain a controlling interest in stock, and whether I wanted to participate. I said O.K. I don't think I even handled the legal work."

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Is that correct?

A. Yes.

Q. On page 2276:

"Q. You don't even know whether the consent to take over was granted or not?

"A. I don't think it was, but I wouldn't even be sure of that.

"Q. Did you ever speak to Mr. Lafount about it?

"A. About what?

"Q. About WORL

388 "A. We probably discussed it on occasion, very occasionally, as far as I know."

A. Referring to the reports, I suppose.

Q. On page 2277:

"Q. There never was any question about the control of the station?

"A. I don't know of any question.

"Q. Has anybody other than Lafount and your brother run this station for the last five years?

"A. I don't know. It has all been in the hands of Mr. Lafount. He can tell you better."

Is that correct?

A. Yes. Read further where I said that Mr. Nordblom still had the stock, 300 in his name, and voted them. And I also told the Committee that I did not have a good recollection of it and I would check it and send it to them.

Q. Mr. Cohen, I am introducing this and giving you an opportunity to explain anything you desire. I suggest if you feel there is any portion that is inconsistent or contradictory, you have Mr. Fisher to contradict it.

A. You show it to me and I will give it to you myself.

Q. Here is the transcript.

A. On page 2272:

"Q. Are you a director?

"A. I don't recall."

389 Q. That has been read in.

A. Page 2275:

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"Q. Are you clear in your mind as to whether you ever got permission of the Commission to take the station over?

"A. I don't know. Mr. Lafount would know better than I would on that. I am not clear in my mind on that.

"Q. Are you a little clearer in your mind as to whether you ever got the permission of the Federal Communications Commission to secure control of that station?

"A. I don't know that permission was necessary in the facts in the facts in this case.

"Q. Are you familiar enough to know that you are supposed to get permission before you buy a radio station?

"A. I think the question is whether, on the record, there has been passed a majority of interest, and if this has not been done it is on account of this litigation which existed.

"Q. What would that have to do with it?

"A. I don't know; only because there is uncertainty about it—uncertainty about the position of this woman and Crockwell, and then Nordblom."

Then on page 2277:

"Q. What I am trying to find out is whether there was such a cloud on the ownership of this stock that you did not feel as if you owned it, and therefore you did not make your application?

390 "A. I think the ownership was all right, but these claims may have been the reason they withheld any permanently."

Directly following that there is this colloquy:

"Q. There was never any question about the control of the station?

"A. I don't know of any question.

"Q. Has anybody other than Lafount and yourself and your brother run the station for the past five years?

"A. I don't know. It has all been in the hands of Mr. Lafount. He can tell you better."

There is one other quotation I want to direct your attention to. That appears on 2277 as well:

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"Q. There is no question about his being the selection of Lafount and yourself and your brother, is there?

"A. We had nothing to do with his selection. We have nothing to do with any of the managerial duties or operations other than to give legal advice when necessary."

That is a correct statement, isn't it?

A. Yes; except that Mr. Lafount did talk of other matters during that period. As to managerial, I knew nothing personally about radio operations, so, naturally, Mr. Lafount handled that.

The Examiner: That question and answer referred to Mr. Lafount, I assume.

The Witness: That is correct.

391 *By Mr. Marks:*

Q. Mr. Cohen, have you had a full opportunity to examine the record of the Select Committee that I have submitted to you and have you inserted in the record any of the quotations that you feel necessary for further explanation of the material I read?

A. Except this, that at the time that testimony was given I had no opportunity to refresh my recollection about any of the matters referred to. Since then I have referred to this correspondence, some of which went into the record, some of which has been delivered to you, which brought back to me some other things, and I would say my testimony now is more in conformity to the facts than that vague testimony.

As you know, Mr. Examiner, in July and August of 1943, I attended the hearings of the Select Committee in the United States Court Building in New York on foreign language, involving some other stations, WOV, and I attended daily.

In November when this subpoena was issued I want to explain for the record what happened. I was in Florida taking a deposition which took four days. On either Fri-

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day or Saturday before the 22nd my brother phoned me and said that Mr. Lafount had been subpoenaed to appear in Washington on Monday the 22nd. He said that the deputy marshal had appeared in my office with a subpoena for me. I assumed it was on the same question because my name came into the hearing in con-
392 nection with some of the foreign language matters.

As you recall, Mr. Marks, one of the witnesses contended that I had not permitted him to appear as an announcer because the Commission claimed that he was a Fascist. I assumed that I was being subpoenaed on that because Mr. Garey at that time had said, "Will you let me know if you employed this man."

Q. I don't want to interrupt you, but the explanation is getting involved. Your point is that you weren't prepared?

A. Yes. I told Mr. McCall who was examining me that I would be glad to submit all the information in writing. When I got there I came there voluntarily.

Q. You later had a chance to correct the testimony before it went into the record.

A. Not the testimony. I was asked if I wanted to make any corrections in the record. I assumed that I could make corrections to conform with facts I learned since.

The Examiner: Do you now want to make any changes in response to the questions raised?

A. I want it to conform to what I have testified here. I think my testimony here will cover that, because since then I have refreshed my recollection, as I have indicated.

By Mr. Marks:

Q. I want to call your attention to this question and answer which appear on page 2271:

"Q. And you have had full and ample opportunity to

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examine the same and make such corrections as you
393 feel appropriate?

"A. That is right.

"Q. With the exception of a correction which you made on page 46 of the transcript, are there any other further corrections you deem necessary in order to have the proceedings of that date truly reflect what transpired?

"A. None that I know of now."

That is correct. Let me point something else out. I didn't believe at the time that the Commission wanted me to change the whole testimony.

Q. The Commission had nothing to do with it.

A. I mean the Committee. It was our understanding that it was supposed to be correct as to what I testified to then. I didn't believe when I was asked to read this record I was going to be permitted to change all these answers.

Q. Mr. Cohen, I am merely getting this into the record for whatever it is worth and I appreciate your explanation, and that is the reason I asked for any explanation you desired to make in this connection.

The Examiner: Is there anything further?

Mr. Marks: That is all.

Mr. Fisher: That is all.

The Examiner: You are excused.

(The witness was excused.)

The Examiner: How many more witnesses do do you have?

394 Mr. Fisher: They are fairly short. Mr. George Cohen is here and I am going to put him up. Then I have a few exhibits that I wish to introduce. They are very short.

The Examiner: All right.

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GEORGE COHEN, a witness called for and on behalf of the Applicant, having first been duly sworn, was examined and testified as follows:

Direct examination by Mr. Fisher:

Q. Will you state your name and occupation?

A. George Cohen, 2933 Mott Avenue, Far Rockaway, New York.

Q. And your occupation?

A. Attorney at law.

Q. How long have you been an attorney?

A. Since 1911.

Q. And you practice law with your brother?

A. Yes.

Q. You have heard the testimony that you are partners and have practiced law together since 1920?

A. That is right.

Q. And you occupy offices with the Bulova Watch Company?

A. On the same floor.

Q. And you have been attorneys for Bulova a number of years, as has been testified here?

A. Yes.

395 Q. You have heard the testimony with reference to the purchase of WORL of Boston from Mr. Lafount and your brother Sanford Cohen?

A. Yes, sir.

Q. You have heard the testimony of Mr. Cohen with reference to the joint ownership of this stock and the joint arrangements. What have you to say with reference to that, very briefly?

A. All I had to do with the purchase of the stock was that my brother had stated that Mr. Lafount had telephoned him with respect to the purchasing of some 300 shares of stock of radio station WORL and he wanted to know if I wanted to buy any of it. I told him that I would take a third.

Q. That you would go in with him on it?

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A. Right.

Q. You have heard the arrangements about that stock?

A. Yes.

Q. Do you know of your own knowledge that stock was delivered to you and your brother in New York?

A. I know the certificate was.

Q. That is what I meant. You have heard, then, the testimony with reference as to why it wasn't registered?

A. Yes, sir.

Q. Are you familiar with the details with reference to the hold-up?

396 A. I have been told by Mr. Lafount about Nordblom's dissatisfaction, as recounted by Mr. Crockwell, and later of Miss Whitwell's statement or claim by her attorney that all the stock was claimed by her, and then of the purchase of the 100 shares, and right after that that Mr. Nordblom, after selling 100 shares, was dissatisfied.

Q. What are the arrangements about that 100 shares?

A. That was to be purchased by me. Mr. Lafount had purchased it for $1,500, and very shortly after I was told by Mr. Lafount that Mr. Nordblom was dissatisfied with that.

Q. That was purchased for you and got into your possession?

A. That is right.

Q. Why wasn't that reported then for almost two years?

A. I said I wasn't going to transfer it on the books and I wasn't going to vote any of the stock or act with respect to the stock until Mr. Lafount cleared up the situation, not only for that 100 shares but for the other 300.

Q. And when was that finally cleared up?

A. It was finally cleared up when Mr. Davison arranged for the payment of $750 to Mr. Nordblom and a release was given. But I think Mr. Lafount had been told over the telephone by Mr. Davison that it was settled and then we transferred the stock and then we made the report of it.

397 Q. And this final payment to Mr. Nordblom, what was your understanding about that?

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A. That was the payment to clear up all the objections to the 400 shares of stock.

Q. That wasn't your understanding that was just for that last 100 shares?

A. No, sir.

Q. You have heard your brother's testimony about the payment of something like $12,000 for all of this stock. Are you familiar with that? Did you handle those transactions?

A. He handled the transactions.

Q. Was that an office account or partnership?

A. As he referred to that $5,000 in 1941, I knew he had drawn that $5,000 and knew he paid it to Mr. Bulova.

Q. On that proportion if he had 400 shares and you had 200 shares, his part would be about $8,000 and your part approximately $5,000.

A. That is correct.

Q. You have heard his testimony about handling Mr. Bulova's affairs for a number of years. You are familiar with that?

A. Yes, sir.

Q. Involving large sums of money he has paid out for him and taking care of deals for him?

A. Yes, sir.

398 Mr. Fisher: I think that is all on direct.

The Examiner: You may cross examine.

Cross examination by Mr. Shuebruk:

Q. Mr. Cohen, how is the stock held by you and your brother?

A. I own 200 shares and he owns 400 shares.

Q. Is that held individually or as a firm?

A. Individually.

Q. Distinct and apart from the firm?

A. Correct.

Q. Do you recall what funds were used to pay for the stock?

A. My brother had been drawing money out of the firm

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and he owed the firm quite a lot of money. So I told him to offset the money against what he owed to my portion of that stock.

Q. You mean the payment he made was out of his individual funds?

A. No, the payment he made, the last five thousand, he drew from the firm account, but it was charged to him, and naturally, if I could give an example, if he was overdrawn $30,000 and he paid $4,000 on my account, then his share, since we are a fifty-fifty partnership, he would be credited with $8,000 and he would only owe the firm $22,000.

399 Q. Then partnership records would reflect the fact that payment of $5,000 was made from the firm account and was charged to him in the accounting between the two of you?

A. We don't conduct a regular set of books with respect to our account between us. It is money that is drawn from the checkbook. In 1941 checks withdrawn which were charged to him, and $5,000 of that he gave to Bulova.

Q. Might I ask how you are able to make income tax reports without some kind of books to reflect the various transactions?

A. Any accountant will tell you a checkbook will be sufficient.

Q. Do you have those checkbooks?

A. Just for the last three or four years that we have to hold for inspection by the Internal Revenue Department.

Q. Is that the only account you keep between you and your brother?

A. That is all.

Q. When did you first hear of the impending purchase of 700 shares of the B stock in WORL?

A. As I stated in my direct examination, my brother stated to me had a phone call from Mr. Lafount, and it would be the same day that he had the phone call, but I couldn't tell you the date. That must necessarily be somewhere around March 25th.

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Q. Had the stock yet been transferred at the time
400 that phone call was received?

A. Of my personal knowledge, I couldn't say, but, he asked me if I wanted to buy stock, and I told him yes. I would gather from that that it had not been bought.

Q. That was your understanding at the time?

A. I don't know what was my understanding at the time. You must realize that has been seven years ago; but I remember the situation that came up.

Q. You didn't give the problem much thought. You just agreed you would be interested in buying some stock?

A. I was buying one-third of the number of shares that were for sale.

Q. Did you go up to the station before the transfer was made?

A. No, sir.

Q. Hadn't seen the station before?

A. No, sir.

Q. Didn't know any more about it than what your brother had told you as to the telephone conversation he had with Mr. Lafount?

A. He may have told me some other things afterward, but I don't recall them now.

Q. Now, after the transfer of $700 was made and one certificate was made in Mr. Nordblom's name for 300 shares and delivered to Mr. Lafount, you say the certificate
401 was delivered to you?

A. Well, it was 300 shares, and I think my brother testified it was delivered to him, but of course I knew of that.

Q. Had you and your brother agreed at that time how many shares you were to have and how many shares he was to have?

A. I think I have already testified that I would take one-third.

Q. Of the 300?

A. Yes.

Q. When you received the certificate, or when your

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brother received the certificate, why didn't you have it transferred in your name?

A. As testified by both Mr. Lafount and my brother, we had been told of these claims by Mr. Nordblom, and I think I testified before that until it was cleared up I didn't intend to become the record owner of that stock.

Q. When did you hear about those claims?

A. I think very shortly afterwards.

Q. After the B-3 certificate had been delivered to your brother?

A. I am not so sure it was after that. I may have been told something about it before that was received. I am not too certain about that, because I haven't thought about this thing for seven years.

402 This question came up as to dates, and so forth only in 1943.

Q. And Mr. Nordblom's claim certainly was not made, was it, at the date of the closing or the following day?

A. I doubt it. If it had been made the closing day and Mr. Lafount had told me about it, there might not have been a deal.

Q. You had agreed with your brother at the time Mr. Lafount talked to him over the phone you would take a third of the 300 shares?

A. Yes.

Q. Mr. Lafount, I believe, testified that he later returned to New York after the conversation and then got the money and returned for the closing on the 26th.

A. I have no recollection of that. That would be a detail that Mr. Lafount handled with my brother.

Q. You don't recall anything but your conversation with your brother.

A. Before the closing I may have not had any discussion. I was paying 100 shares and that is all.

Q. How did it happen that you later acquired the additional 100 shares from Mr. Nordblom as a transfer from certificate B-5?

BLEED THROUGH-F

A. As Mr. Lafount stated, he had learned that Mr. Nordblom wanted to sell it and he asked me whether
403 I would buy it, and so I thought I would buy it. I thought in that way we might clear the whole situation, and we bought it. And then Mr. Nordblom again stated that he was dissatisfied.

Q. When you say "We bought it," what do you mean?

A. I mean Mr. Lafount bought it for me.

Q. And your understanding is that the transaction arose as the result of Mr. Nordblom's wanting to sell the stock?

A. I am not very clear on it. I have no direct recollection that far back, but whether Nordblom wanted to sell it or Mr. Lafount took the question up, I don't exactly know. But, so far as I was concerned, I learned that Mr. Nordblom was willing to sell and I was willing to buy.

Q. That was before the sale was made by Mr. Nordblom?

A. I believe so.

Q. And you do not recall, do you, the testimony by Mr. Lafount that he purchased the stock at that time in order to carry through a possible sale of the station which he had under contemplation?

A. That may have been the reason.

Q. The deal apparently fell through.

A. It may have fallen through and I bought it, but it was certainly before it was bought, at least I think so.

Q. You bought it from Mr. Lafount or Mr. Nordblom?

A. Mr. Nordblom, it is my understanding. Mr. Lafount paid Mr. Nordblom $1,500 for me.

404 Q. And you instructed Mr. Lafount to pay him that money on your account?

A. I don't suppose I went and said, "I hereby authorize you to pay out $1,500." He said, "Do you want to buy it?" I said, "Yes." We didn't need any formal statement.

Q. He had your authority?

A. He had my authority.

Q. It was the intention on your part to buy it for yourself and not buy it preliminary to a sale of the station to somebody else?

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A. I can't say yes or no, but I will say I bought it.

Q. Well, on which basis?

A. Myself.

Q. When did Mr. Nordblom first raise the claim which led to the settlement of the B stock?

A. It is my impression that it was almost immediately after the sale had been made that Mr. Lafount told me that Mr. Nordblom was dissatisfied.

Q. This is the sale of certificate B-5 in September, 1940?

A. That is right.

Q. You have never seen any written correspondence or claim asserted by Mr. Nordblom prior to the letter introduced dated May 1, 1943, from Mr. Nordblom, have you?

A. No, sir.

405 Q. And the final agreement or payment was $750?

A. Yes, sir.

Q. Again, Mr. Lafount took care of the handling of the situation?

A. Yes, sir.

Q. And he was repaid in what manner?

A. In the manner that my brother stated; he got the credit.

Q. What was that?

A. My brother paid $12,000 altogether to Mr. Bulova. $5,100 represented the amount that he owed Mr. Bulova for the 200 shares of stock and the balance represented the purchase price for 300 shares and the 100 shares.

Q. What about the $750?

A. I think it worked out that the amount paid proved to be sufficient to cover that. If there is any amount I owe them, I will have to pay them.

Q. You haven't bothered to find out?

A. Well, we will finally go through the figures. I have clients that owe me a whole lot more money than that that I haven't billed.

Q. The $750 is still unallocated between you?

Q. It is my present belief it is all covered, but if it isn't, I will pay him.

BLEED THROUGH-F

Q. Your belief is it was covered how and when?

406 A. As I told you, my brother had paid approximately $12,000 and under the figures it would amount to enough to cover all of the stock.

Q. When was that $12,000 paid?

A. It was paid in 1941.

Q. When was the $750 paid?

A. 1943.

Q. It was additional payments, was it not?

A. Mr. Lafount owed Mr. Bulova $52,500 and my brother paid $12,000. And if in final analysis in going through the figures my brother paid $750 more than he should have paid, Mr. Lafount will have to give us credit for that.

Q. You don't know whether the $750 has been taken care of or not?

A. I wouldn't say yes or no until we have a final adjustment.

Q. But, no final adjustment has been had?

A. Well, I haven't definitely gone over them. I have relied on my brother to straighten the thing out.

Q. Have you ever taken any interest in the station?

A. Yes, I was interested in learning whether they were making money. I was treasurer. I have had conferences with the accountant as to the condition of the business. I have seen the weekly reports.

Q. Did you ever receive a salary?

407 A. No, sir.

Q. Did you ever attend any meetings?

A. I was treasurer and not a director.

Q. You never attended any stockholders' meetings?

A. No, I don't go to Boston.

Q. That is all.

The Examiner: To whom, if anyone, have you given proxies to vote your stock?

The Witness: I don't know whether there has been an annual meeting since. If there has been one, Mr. Lafount had it.

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A. I can't say yes or no, but I will say I bought it.

Q. Well, on which basis?

A. Myself.

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Q. Did you ever attend any meetings?

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A. No, I don't go to Boston.

Q. That is all.

The Examiner: To whom, if anyone, have you given proxies to vote your stock?

The Witness: I don't know whether there has been an annual meeting since. If there has been one, Mr. Lafount had it.

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The Examiner: The minute book would reflect that.

The Witness: Yes.

The Examiner: Is there anything further?

Mr. Fisher: No.

The Examiner: You may be excused.

(The witness was excused.)

Mr. Fisher: I would like to call Mr. George Lasker.

GEORGE LASKER, a witness called for and on behalf of the applicant, having first been duly sworn, was examined and testified as follows:

Direct examination by Mr. Fisher:

Q. Are you the manager of Radio Station WORL?

A. Yes.

408 Q. How long have you been the manager?

A. Since 1939.

Q. Were the arrangements to become manager made with Mr. Lafount?

A. Yes, sir.

Q. In 1939 you went to Boston and took charge of the station?

A. That is right.

Q. As local manager?

A. Yes.

Q. And have been ever since?

A. Yes.

Q. Have you had occasion to make a survey with reference to the programs since you took over the station? I just want you to touch briefly on this. Did you check the programs and put in a new type of programs?

A. Prior to my appointment, about a week before arriv-

BLEED THROUGH –

ing in Boston, I talked the matter over of building the station with Mr. Lafount and we made a study together, I going to Boston and making a survey of the programs, the showmanship program on all radio stations in order to get or determine as to the type of radio stations we were about to run. I made the survey and reported back to Mr. Lafount.

Q. Did you put that in effect?

A. Yes. We found a lack of showmanship in the
409 broadcasting activities of all radio stations. Believing there was a lack of showmanship, I designed a program to liven up the entertainment activities in the City of Boston.

Q. Did you put a program in known as the 920 Club, with news and music throughout the day?

A. Yes; the program we set up was a program called the 920 Club, music all day, which was to attract the listeners. The general idea of it was to attract listeners from other stations who were listening to the soap opera programs which were prevalent throughout the day on all stations.

Q. Has this program become so popular that you secured a lot of members to the 920 Club?

A. We never had any memberships, Mr. Fisher. We did get a huge audience. The Hooper ratings of the station were very high; to a point where we were tied for first place.

Q. They came up over years that you managed the station?

A. Better than some of the networks during part of the day.

Q. Now, do you perform a public service in the way of local organizations in Boston and have you in the past few years?

A. Yes.

Q. Have you prepared an exhibit showing those organizations that you perform a public service with?

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A. Yes, sir.

410 Q. They are organizations that you give gratis programs at all times?

A. Yes.

Q. I would like to have this marked as Exhibit 13 for Identification.

(The document referred to was marked Applicant's Exhibit No. 13, for Identification.)

Q. I hand you Exhibit 13 for Identification and ask you if that is a list of these organizations that you prepared yourself and are familiar with?

A. Yes, sir.

Q. At this time we wish to introduce Exhibit No. 13.

The Examiner: Any objection?

Mr. Marks: No.

The Examiner: It will be admitted as Exhibit 13.

(Applicant's Exhibit No. 13 was received in evidence.)

Q. Now, Mr. Lasker, with reference to the matter of income to the station, has that increased materially since you took over the station?

A. Considerably throughout the years; it grew from year to year.

Q. Pursuant thereto have you prepared a billing of each week of each month from 1939, when you came in, until the present time?

A. Yes. I took a typical week, being the middle

411 of the month.

Q. Of each month?

A. Yes. I took a typical week of each month.

Q. Does that show a gradual growing up of income each month?

BLEED THROUGH

A. Yes.

Q. For instance, starting with $904.05 a week and ending up with $6,200?

A. Those are my own figures taken from the record.

Q. I would like to have this marked Exhibit No. 14 for Identification.

(The document referred to was marked as Applicant's Exhibit No. 14 for Identification.)

Q. You say except the last two weeks, and those are your own pen figures, and this is taken from your actual record?

A. Yes, sir.

Q. At this time I wish to introduce Exhibit No. 14.

The Examiner: Is there any objection?

Mr. Marks: No objection.

The Examiner: It may be admitted.

(Applicant's Exhibit No. 14 was received in evidence.)

Q. Have you also prepared a list of the most prominent accounts of the station to show the general account on the station that you are serving in the Boston area?

412 A. Yes, sir.

Q. Will you mark that Exhibit 15 for Identification?

(The document referred to was marked as Applicant's Exhibit No. 15 for Identification.)

Q. I hand you here Exhibit 15 for Identification and ask if that is an exhibit you prepared yourself?

A. That is right. They are 1944 accounts.

Q. At this time I wish to introduce Exhibit 15.

The Examiner: Is there any objection?

Mr. Marks: No.

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The Examiner: It will be admitted.

(Applicant's Exhibit No. 15 was received in evidence.)

Q. These are not all your accounts?

A. Some of the outstanding accounts.

Q. Roughly, how many accounts do you serve a week or month?

A. They fluctuate between 80 and 90.

Q. Now, you mentioned the Hooper radio report. Is that a Hooper service that is a disinterested report on broadcasting stations in the community?

A. Paid for by all stations, yes.

Q. It is a disinterested company?

A. That is right.

Q. And you have that service, do you, in the station?

A. That is right.

413 Q. Have you prepared from that Hooper report the percentage of listeners to your station from 1941 through 1943?

A. Yes.

Q. At a comparable time each year to show how the increase of listeners has taken place over the station?

A. Yes, sir.

Q. I would like to mark that Applicant's Exhibit 16 for Identification.

(The document referred to was marked Applicant's Exhibit No. 16 for Identification.)

Q. I hand you Exhibit 16 for Identification and ask you if that is such report taken from the Hooper report for the month of October for each of the years 1941, 1942 and 1943?

A. That is right.

Q. At this time I wish to introduce Exhibit 16.

The Examiner: Any objection?

BLEED THROUGH

Mr. Marks: None.

The Examiner: It will be admitted.

(Applicant's Exhibit No. 16 was received in evidence.)

By Mr. Fisher:

Q. Finally, Mr. Lasker, will you just briefly outline the outstanding general programs of interest on this station serving communities that is different from other programs on other stations?

A. You mean public service programs?

414 Q. Public service programs.

A. We have one program in particular which has been on a considerable length of time. It is a safety program.

Q. How long has it been on?

A. It has been on about five years. Up until our entry into the war we had a man-on-the-street program done by two uniformed policemen, with what you call squad cars, with a microphone on it, a picture of which you have in your hand, and they stand on the corner and do a quiz. They stop the motorists on a very busy thoroughfare and they ask him a lot of questions about traffic and safety.

Q. Let me interrupt you. That is a program your station has had on for four or five years as public interest for Boston?

A. Yes, sir. That program was taken off the air at the time of our entry into the war because quiz programs were prohibited.

Q. Removed to where?

A. But we put the program on the air every Saturday morning since. We have children come from the different public schools with their principals or teachers and we put on a half-hour show in the interest of public safety, done by the same policemen.

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Q. Do you have a photograph showing those policemen and the type of program and advertisement on that?

415 A. That is right.

Q. I would like to have this marked Applicant's Exhibit 17 for Identification.

(The document referred to was marked Applicant's Exhibit No. 17 for Identification.)

Q. I hand you Exhibit 17 and ask if that is a true copy showing these two policemen and advertisement for it?

A. That is right.

Mr. Fisher: At this time I wish to introduce Exhibit 17.

The Examiner: Is there any objection?

Mr. Marks: No objection.

The Examiner: It will be admitted.

(Applicant's Exhibit No. 17 was received in evidence.)

By Mr. Fisher:

Q. Have you another program known as "Coast Guard Show"?

A. Yes.

Q. Explain that briefly.

A. The Coast Guard Show is done from the Boston Common Park.

Q. How often is that?

A. It is on the air every Sunday from 5 to 5:30. We have celebrated guests on that program each week.

Q. How long has that program been on the air?

A. I imagine about six months or more. During the winter months we broadcast it from the main ball-

416 room of the Hotel Statler, and during the summer time from outside.

BLEED THROUGH

Q. Have you had pictures made showing the audience of that program outside?

A. Yes. We have had celebrated people, such as the governor and mayor.

Q. I would like to have this marked Applicant's Exhibit No. 18 for Identification.

(The document referred to was marked as Applicant's Exhibit No. 18.)

By Mr. Fisher:

Q. I hand you Exhibit 18 for Identification and ask if that is such a picture showing that program.

A. That is right.

Q. At this time I wish to introduce Applicant's Exhibit 18.

The Examiner: Is there any objection?

Mr. Marks: No, sir.

The Examiner: It will be received.

(Applicant's Exhibit No. 18 was received in evidence.)

By Mr. Fisher:

Q. Just enumerate some of the other outstanding programs, and that will be my last question.

A. We have the American Red Cross three times a week. These are programs which are running now. We have the Institute for Oral and Visual Education. That pro-
417 gram has been on for about three years. Then we put on our station breaks every half hour some slogan such as "Win the War in 1944."

Q. How long have you been having those slogans on?

A. A couple of years now. Then we had "Back the Attack"; slogans like that. We have the American Ideals program that is on every Sunday. We have the program

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called "Freedom of the Land," which is sponsored by the Agricultural Department.

Q. How often?

A. Every Sunday.

We have the Marine Corps musicale. We have the "Voice of the Army."

Q. How often are those on?

A. Every Sunday. We have "Something for the Girls." That is a Navy recruiting program.

Q. Just one further question, Mr. Lasker. What is the McNinch award?

A. It is public service.

Q. Any particular year that was for?

A. I have forgotten the year.

Q. But you got it for a certain year?

A. Yes.

Q. I think that is all.

The Examiner: Is there any cross examination?

418 *Cross examination by Mr. Shuebruk:*

Q. When did you first know Mr. Lafount?

A. I first met Mr. Lafount the last week in December, 1938.

Q. And when did you come to WORL?

A. The next week, 1939; in January. We negotiated for a week, terms, and the survey which I made of the Boston market took exactly one week.

Q. You hadn't known Mr. Lafount earlier in the week?

A. Never met him before.

Q. What station were you manager of when you came to WORL?

A. WPEN in Philadelphia.

Q. Do you know Mr. Nordblom?

A. No, sir.

Q. You never saw Mr. Nordblom at the station?

BLEED THROUGH –

A. No, I don't believe I have. He was the owner of the Hotel where we were quartered. I understood he paid us a visit, but it so happened that I was out at the time.

Q. His company was managing the hotel?

A. Yes.

Q. How frequently did you consult with Mr. Lafount on business matters?

A. Almost every week.

419 Q. More than every week?

A. Well, I come into New York City every week and I talk to Mr. Lafount about the station and the problems, or get information from him, and so forth.

Q. What about between your visits to him in New York City?

A. Sometimes Mr. Lafount comes to Boston, and we might have two conferences a week.

Q. Does Mr. Lafount come to Boston frequently?

A. Mr. Lafount comes to Boston very frequently, but not once a week. I used to come to New York City to service my account nearly every single week. I would meet with Mr. Lafount every time. I would never go into New York City without seeing Mr. Lafount.

Q. In the interim you would check things with him over the phone?

A. Oh, yes, indeed.

Q. That is all.

The Examiner: Is there anything further?

Mr. Shuebruk: I would like to call Mr. Zinneman.

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MORRIS ZINNEMAN, a witness called for and on behalf of the Commission, having first been duly sworn, was examined and testified as follows:

Direct examination by Mr. Shuebruk:

Q. Will you give your name and address?

420 Morris Zinneman, 1015 Grand Concourse, New York.

Q. What is your position, Mr. Zinneman?

A. I am an accountant.

Q. Certified public accountant?

A. Yes.

Q. Doing work for a number of organizations?

A. That is right.

Q. And particularly for the various Bulova interests?

A. Not particuarly, but among them.

Q. Are you familiar with the books and accounts of the station WORL?

A. I am.

* * * * *

437 A. Now, on September 22nd, at page 159 of this record, Mr. Lafount identified Commission Exhibit 10, which was a financial statement of the Broadcasting Service Organization, Inc., as of April 30, 1937. This financial statement was submitted to the Commission at a hearing held on an application of that licensee, the proceedings of which are recorded in Docket 4206. At that time Mr. Lafount was asked to describe an item of $25,000 that was shown as an asset of the licensee, more particularly as cash in the bank.

His testimony shows that he did not recall how that asset was put on the corporation books and at that time he said that the accountant would check the books and would be glad to testify about it.

Now, since that time, Mr. Zinneman, have you had an occasion to examine the books of Station WORL with

BLEED THROUGH –

particular reference to Exhibit No. 10, copy of which I hand you?

A. Yes, but the books would not reflect any such statement because the company closed its books on December 31st. This is an interim statement, and the adjusting entries put on the work sheet ordinarily are not put on the books except when you close the books.

438

Q. Now, Exhibit 10 shows, as the first asset, cash in bank $25,362.11. Can you tell us what the corporation books show for the bank balance as of that date?

A. I believe they show $362.11.

Q. How then do you account for the existence of an additional $25,000 as an asset of that balance sheet?

A. That was a proposed balance sheet and that was the purpose of the balance sheet and if that had been O.K.'ed by the F.P.C. the money would have been put in.

Q. It does not correctly reflect the true condition of the corporation as of April 30, 1937, is that right?

A. The cash of $25,000 had not been deposited in the corporation bank account.

The Examiner: Had not?

The Witness: Had not.

By Mr. Marks:

Q. Was it ever deposited?

A. No.

Q. Was there any other asset in the way of a note, stocks, bonds, or any other item which could be relied upon in liquidation to realize $25,000 at that time?

A. In lieu of $25,000?

Q. Yes.

439

A. No.

Mr. Marks: Will you please mark this for identification?

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(The document referred to was marked Commission Exhibit No. 25 for Identification.)

By Mr. Marks:

Q. I show you what has been marked by the reporter as Commission Exhibit No. 25, and ask you if you can identify that document?

A. It seems to be a copy of a statement prepared by my office.

Q. As of what date?

A. December 31, 1937.

Q. A financial statement, is that what it is?

A. Yes.

Q. Do you recognize it as a financial statement issued by Frederick William Greenfield, your office, with reference to Station WORL's financial condition?

A. Yes, it seems to be a copy of our statement.

Q. And referring to that exhibit, will you tell us what the total cash on hand amounted to?

A. The total cash on hand in bank $728.48.

Q. Now, calling your attention again to Commission Exhibit 10, I refer you to the liability side which shows the capitalization. What is the class A stock valued at on
440 Exhibit 10 as of April 30, 1937?

A. Valued at $44,000.

Q. And referring again to Exhibit 25, what is the corresponding value of the class A stock as of December 31, 1937?

A. $44,000.

Q. There was no change in that item?

A. No change.

Q. Now, referring to Exhibit 10 again, what was the value placed upon 1,000 shares of class B stock as of April 30, 1937?

A. $92,282.27.

Q. Referring to Exhibit 25, what is the corresponding value for the class B stock?

BLEED THROUGH –

A. $44,110.99.

Q. How do you account for the reduction in the value of the class B stock between April 30, as shown on Exhibit 10, and December 31, as shown in Exhibit 25?

A. In the first place the company sustained a loss since April 30, 1937 to December 31, 1937.

Q. In what amount?

A. I cannot tell you from the statement because this is the loss for the year.

Q. Referring to what item in what amount?

A. The loss for the entire year was $12,565.43.

441 Q. What is the difference in amount between $44,000 and $92,000, as shown in Exhibit 10?

A. There was an item written off, from memory, it was development expense.

Q. How much did that developmental expense amount to?

A. On April 30, 1937, it seems to be $38,294.60.

Q. Would you say that was a true asset on that date?

A. Yes.

Q. Would you care to explain that?

A. It is an asset but it serves no purpose in a company whose stock is not on the market. If the stock had been on the market publicly owned, it would have a value, it is the equivalent to perhaps good will.

Q. It did inflate the value of WORL as shown in Exhibit 10 by the amount of $40,000, approximately, did it not?

A. It didn't inflate it.

Q. Within six months it was written off, however?

A. It was written off because we could not take any depreciation off that for income tax purpose and therefore it served no purpose.

Q. As represented in Commission Docket 4206 the total assets of WORL as of April 30, 1937, as shown in Exhibit 10 was what amount?

A. $136,878.62.

442 Q. And it represented by your financial statement as of December 31, 1937, which is Commission Exhibit No. 25, as what being the total value of WORL?

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A. $99,736.87.

Mr. Marks: Will you please mark this for identification?

(The document referred to was marked Commission Exhibit No. 26 for Identification.)

Mr. Marks: If counsel has no objection, I would like to introduce in the record at this time an exhibit which has been marked as Commission Exhibit No. 26, which is a copy of the estimated cost of converting Radio Sation WORL from non-directional to directional, taken from the application of that license as contained in Docket 4206.

This exhibit shows the detailed items making up the estimated cost of construction.

Is there any objection on that?

Mr. Fisher: No objection.

Mr. Marks: At this time, if Your Honor please, I would like to offer in evidence Exhibit No. 25 and Exhibit No. 26.

The Examiner: Any objection?

Mr. Fisher: No objection.

The Examiner: They may be admitted.

(Commission's Exhibits No. 25 and No. 26 received in evidence.)

Mr. Marks: I would also like to refer at this time
443 to Volume 7 of the Federal Communications Commission report at page 242, which is the Commission's decision on the application of WORL, referred to as Docket 4206, quoting from that decision on page 243, the following:

"The balance sheet of the applicant as of April 30, 1937 shows total assets of $136,287.62, of which $25,362.11 is cash in bank. The only liabilities of the applicant, other than stock liability, are shown to amount to $796.35. The estimated cost of the neces-

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sary improvements to Station WORL, which will be necessary if this application is granted, is $20,650."

Mr. Fisher: No objection, except, isn't it correct in the rest of that decision that the application was denied? It was not granted.

Mr. Marks: That is right.

The Examiner: We have it on the record that the application referred to was denied.

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488 *Cross examination*

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492 Q. The last question is, what is your explanation of this $25,000 cash item here? I do not believe you explained it. You said it was there, and it was not in the bank. What is your explanation of that, Mr. Zinneman?

A. The $25,000 was shown on the balance sheet. The balance sheet should have been headed up pro forma balance sheet or proposed balance sheet, and if permission had been given by the F.C.C., for whatever purpose that money would have been used for, that money would have been put up.

Q. Put up by whom?

A. By Lafount.

Q. Mr. Lafount?

A. Yes.

Mr. Fisher: I think that is all.

The Examiner: The fact is that at that time
493 that statement was issued showing that $25,000 item as cash on hand in the bank and it was not so.

The Witness: It was not in the corporation account in the bank.

(Witness excused.)

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Whereupon, ARDE BULOVA, a witness called on behalf of the Commission, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Marks:

Q. Your name is Arde Bulova?

A. That is right.

Q. And your address, Mr. Bulova?

A. Pierre Hotel.

Q. And are you affiliated with the Bulova Watch Company?

A. Correct.

Q. What position do you hold?

A. Chairman of the Board.

Q. I believe you are also Treasurer?

A. Yes, I am also the Treasurer.

Q. I want the record to show at this time, Mr. Bulova, we are awfully sorry to have kept you waiting at this time, and at the request of Commission counsel you were asked to leave the room while Mr. Zinneman, your accountant, testified. That is not to be regarded as a
494 reflection upon you or Mr. Zinneman or counsel to the case, but there is quite a bit of confusion in this record as to the nature of the transactions involving Station WORL, the amount of money which was loaned, who the parties in interest were, the manner in which this loan was repaid and in an effort to ascertain the facts in the minds of the various witnesses, independent of any other testimony, I asked that you be sequestered.

Mr. Bulova, are you interested in any radio stations?

A. I am.

Q. How long have you had an interest in radio stations?

A. '30, '31, '32, quite a few years.

Q. Are you able to state for the record at this time the nature of your interests in radio stations at the present time?

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A. Yes, a controlling interest in Station WNEW.

Q. Do you know what percentage of the stock you hold?

A. Over 50 percent but I do not know just how much.

Q. I realize you may not know the details because of your various interests, and if you do not know, just say so.

In WNEW it is a controlling interest?

A. Yes. There is WPEN.

Q. What interest do you hold there?

A. All of it, I think.

Q. Any others?

A. Let me see, there were the stations that were
495 sold, WOF.

Q. Do you know how much you own there?

A. I do not know. More than 50 percent, a controlling interest anyway.

Q. What about WCOP?

A. Well, that has been sold.

Q. Any others—they have been sold, the others?

A. Yes.

Q. Do you know Harold Lafount?

A. I do.

Q. How long have you known him?

A. I imagine since 1933, 1934.

Q. And he is an employee of yours or associated with you, is that right?

A. He is associated with me since that time.

Q. In what connection?

A. He has been general manager for my radio interests.

Q. And I believe he is an officer of the corporations owning the various radio stations that you have mentioned?

A. I believe so.

Q. How long have you been associated with Sanford Cohen?

A. A long time, 25 years, something like that.

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Q. What capacity is he associated with you?

A. He is attorney for the company and for me personally and other matters over a period of many years.

496 Q. When you say the company, you mean the Bulova Watch Company?

A. That is right.

Q. Where is his office with reference to yours?

A. Right at the headquarters of the Bulova Watch Company.

Q. Do you know George Cohen, his brother?

A. Yes.

Q. He is also your attorney?

A. That is right.

Q. And what length of time have you known him?

A. The same time, has been sort of associated counsel and has been there for years.

Q. In addition to being the attorneys for your various enterprises they are your personal attorneys?

A. That is right.

Q. Do you know the previous witness, Morris Zinneman?

A. Yes.

Q. And how long have you known him?

A. Goes back a long time, I do not know how many year, 25 years, 20 or 25 years.

Q. And he has been associated with you in a business capacity?

A. Yes, in a business capacity, he has been my accountant, yes. He has also been an officer of some of these companies, and so forth.

497 The firm is Greenfield, and I guess he is one of the members of that firm and they have acted the same as the Cohens. They are the accountants and also Cohens the attorneys for the Bulova Watch Company all these years. The Bulova Watch Company I might say is the goose that laid the golden egg that made all these things possible, that might cover it.

BLEED THROUGH

Q. Mr. Zinneman, or his firm, is the accountant for the Bulova Watch Company, is that right?

A. That is right.

Q. Does he also handle your personal financial accounting matters?

A. That is right.

Q. Do you know George Crockwell?

A. I know of him. I do not know him.

Q. Did you ever have any business transactions with him?

A. Yes, I think I once made a loan to him on some stock of $5,000.

Q. Previous to that, were there any business dealings between Mr. Crockwell and yourself?

A. I would not remember.

Q. Do you know when Station WORL was purchased by Lafount, Sanford Cohen and George Cohen?

A. Approximately?

Q. The date that the deal was closed according to the agreements was March 25, 1937. Using that as a
498 guiding date, can you tell us when you first heard about the transaction involving the sale of the 70 percent interest in the station?

A. I do not know about the details. I think in the very beginning there was a loan for a minority interest or something like that that Mr. Lafount wanted to buy. I remember them discussing it with me. The facts are quite simple.

Q. If you will, please, state them.

A. As far as I can remember or as nearly as I can remember it.

I had an interest in a Boston station.

Q. That is WCOP?

A. Yes, and Mr. Lafount, who was more or less my steering committee of one in radio interests because of his knowledge and so forth with the Radio Commission, and I decided with my radio interests I would need a

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good counsellor and advice, and I had decided Mr. Lafount would be the man, that is how he became associated with me.

I was interested at that time in working out a sort of small eastern network. I had been associated with other radio development previous to that time, the American Broadcasting Company, Jock Whitney, and we were trying to build a network at that time, some time ago, I do not know whether it was before or after. It seems to me it might have been before that date. I thought it would be a good idea if we could acquire interests in stations,
499 one in Boston, New York, New Haven, Hartford, Baltimore, Washington, and so on, and make an eastern network. That was the thought I had in reference to radio.

Q. To be known as the Atlantic Coast Network?

A. I did not have a name for it. I thought being interested in radio and being a large radio advertiser ourselves I thought it was a good idea and there would be a need for a network of that kind. I still think there is, maybe somebody else will be doing it. I have just gotten a little tired, but I felt there was a need for a network of that kind where possibly 30 or 35 percent of our population is in that area, and possibly 50 percent of the purchasing power located in that area, and I still think it is a good idea.

Then these things came up and I remember him telling me about this in Boston, and he came with this.

Q. When you say this, you mean WORL?

A. WORL and so forth. I told him I am not interested. I was not interested.

Q. Why?

A. Because I already had an interest there. If I had been interested with hesitancy I would have acquired it. The purpose of this hearing is to find out why I did not acquire it. The facts are very simple. They can only be complicated if thinking makes them so.

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Q. I want the facts and I want to get it clear.

500 A. These are the facts. He asked me then whether there was any objection of he personally acquiring that interest. I think there was a minority stock that he had an interest in, and I said "no, not at all." I figured it was only proper he would ask me because he was the general manager of my other operations and there might have been a conflict as to competition, because I had a station in the same city.

Q. You already had your Boston outlet and you were not interested in any other outlet?

A. That is right.

Q. In fact, that this was a daytime station did not make any difference?

A. Yes, and it was not part of the network operation I had in mind anyhow. I needed full-time stations. I had a part time station in New York which, as you know, finally acquired a full-time status. That is how I came to own, accidentally, two stations in New York. I never wanted two stations, not for any purpose. I never heard of multiple ownership until Mr. Fly became chairman, that was in 1939.

Nobody ever raised that question. There was no reason why I could not own five stations in any city. The only reason I did not want to own WORL was because it did not fit into my plan, a plan to own a single station.

Q. Now, Mr. Lafount came to you sometime prior to this transaction being closed and he told you WORL

501 was for sale, is that right?

A. No, he did not. He did not tell me that at all. He told me I could acquire an interest in the station, and if I did not want it he would acquire an interest in the station if I did not have any objection to it. I told him I had no objection, and he would buy it or the Cohens would buy it. I remember it was just one of those things in passing. It did not take a very long time.

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I might for the record say that in those periods I spent six, seven or eight months abroad. I never was home. I used to make two trips abroad.

502 Q. The record contains statements to that effect already, Mr. Bulova.

A. That is right. Therefore, I would only be here for short periods of time and return to Europe, where we have plants, and do manufacturing in Switzerland, France, and other places. He came to me and asked me whether I had objection. He then told me he could sell some securities and he could have it. I told him that was not necessary, that I would let him have it. At that time he mentioned to me there was a debit, he had a balance due him of maybe $12,000 or $13,000, I do not remember what it was that he had laid out for me. At that time I gave him a check and I told him that I would be glad to let him have the money. I let him have a check for $52,000 or whatever it was.

Q. Was that your personal check, Mr. Bulova?

A. I do not know and I do not think it was. If it was a company check it would have been charged to my account, which was the method used and I understand you want to examine the company records, which in our books will plainly disclose that. I do not even remember but it might have been a personal check I drew.

Mr. Marks: Will you please mark this for identification?

(The document referred to was marked Commis-
503 sion's Exhibit No. 30 for Identification.)

By Mr. Marks:

Q. To refresh your recollection, Mr. Bulova, I show you what has been marked Exhibit No. 30 and ask if you recognize that?

A. That is a cashier's check, isn't it?

Q. On the Empire Trust Company, dated March 24, 1937?

A. That is right.

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Q. In the amount of $52,500?

A. I must have given them the money, otherwise they would not have given it to him.

Q. The Empire Trust Company is your bank?

A. That is right.

Q. Is it correct to say that the cashier's check from the Empire Trust Company, identified as Commission's Exhibit No. 30, was used by Mr. Lafount to buy this stock?

A. That is right.

Q. And that amount was charged against your account at the Empire Trust Company?

A. Undoubtedly.

Q. Either your account or the Bulova Watch Company?

A. I imagine my account. I do not remember, but the accountant ought to know, I do not remember.

Mr. Marks: I offer in evidence at this time Commission's Exhibit No. 30.

504 Mr. Fisher: No objection.

The Examiner: It will be admitted. Counsel for the Commission will supply an additional copy.

(Commission's Exhibit No. 30 was received in evidence.)

Mr. Marks: The record should disclose the fact that Mr. Cohen, on behalf of Mr. Bulova, furnished the photostatic copy referred to.

By Mr. Marks:

Q. Now, at that time the sum of $52,500 was advanced by you to Mr. Lafount and used by him for the purchase of 700 shares out of 1,000 of WORL common stock?

A. As I explained to you, at the time he talked to me about it, I think I owed him $12,000 or $13,000, so I really advanced him only $40,000.

Q. Was there a note given for that advance by Lafount to you?

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A. No. Mr. Lafount was handling for me about $2,000,000 in radio investments.

Q. For you?

A. For me.

Q. This, however, he was handling for himself?

A. That is right.

Q. Had he ever handled a transaction for himself with your funds before?

505 A. I do not recall, I do not think so, I do not remember. He may have, there may have been an exchange of checks. I know Mr. Cohen has done the same thing. I might say this, this is a relationship that was not just kept as a purely customary basis as to customer and buyer and seller relationship. It was a relationship based on utmost confidence between friends. If Mr. Cohen needed money tomorrow and came to me and wanted it or Mr. Lafount wanted $25,000 or $50,000 for a transaction they wanted to go into, they could have it without hesitancy, there would be no question about it. How they would pay it back was unimportant. They are both financially responsible, they own stock in the Bulova Watch Company and there is no question about their credit.

Q. They were using your money instead of theirs to go into this venture, is that it?

A. No, I consider it their money. There is no question as to whether the venture was good or not, they were going to pay me back that money. I do not care whether the venture would turn out good or not. They were responsible for the money, it was not my money, it was their money. That would be my interpretation from a business standpoint. I have loaned associates money and they put it in ventures where they have lost, but they have always paid me back.

Q. But as far as you remember, this was the first and only time in your experience with Mr. Lafount?

506 A. No, I can not remember, I do not remember. Sums may have been taken prior to that by him or subsequent to that.

Q. Were there ever sums as large as $52,000?

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A. I have passed larger sums than that to Mr. Lafount.

Q. Let me interrupt you for a moment.

A. You mean as a loan to him?

Q. A personal matter to him; has there ever been a sum as large as $50,000 involved that you advanced to Mr. Lafount as an individual, personal matter?

A. I would not recall. There may be in the record. I do not know. I advanced much larger sums to my other associates.

Q. If Mr. Zinneman, your accountant, testified that he had no knowledge of any such transaction, would you be willing to accept that as accurate?

A. That is right. I just do not want to make a statement without knowing the facts. I am just trying to remember.

Q. I take it you have said there was a credit due to Mr. Lafount of $12,400 arising out of moneys he had advanced prior to this date, that you owed to Mr. Lafount?

A. That is right.

Q. How do you know it to be so?

A. He told me.

Q. When did he tell you that?

A. At the time we were discussing this.

507 Q. That is in 1937?

A. That is right. At that time he told me if I had no objection, as I was not interested in it, he would buy it with the Cohens, that is, if it was not in conflict and I would have no objection, and I said no.

Q. Since that time have you discussed the transaction with him?

A. No.

Q. In preparation for your testimony, did you go over the facts of the case either with Mr. Lafount, Mr. Cohen or Mr. Fisher?

A. Yes, they discussed just recently as to how they borrowed the money and so on, how they paid it back, and so forth.

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Q. Do you have an independent recollection of the $12,400 credit which was in existence at that time?

A. No, except what they told me, the record would show.

Q. By the way, has it been common for Mr. Lafount to lay out money on your behalf as a personal matter? There has been some testimony he would give you $1,000 or $1,500.

A. That is right.

Q. That is so?

A. I do not know just what the amounts ran into,
508 but I understand it ran into quite some sums. As a matter of fact, I understand, as they tell me now, I owed him a balance of a few thousand dollars. In other words, I owe him a balance.

Q. Did that balance at any time, as far as you remember now, ever run as high as $20,000, $25,000?

A. Oh, yes, I think so, as far as I can remember.

Q. Higher than that?

A. I do not know. The accountant would know that.

Q. Mr. Zinneman has testified that he does not believe that the balance exceeded at any time $30,000. Would you agree with that statement?

A. He ought to know; after all, he took care of it.

Q. You do not pay any attention to those details?

A. Not to the accounting at all, I do not pay any attention to the accounting, to the check books or the handling of the account at all.

Q. How would those debts from you to Mr. Lafount personally arise? A. Well, in his activity, in radio, when he acquired a piece of real estate or anything at all for my radio activities, with which he was also associated, he would lay out the money, make the purchase. Undoubtedly most of the time I would not even be here in
509 this country, I would be somewhere else. He just did that. Of course, Mr. Lafount would be qualified to know how much money at any one period

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he has laid out for my account.

Q. And the amounts?

A. There again, whether it was $25,000 or $30,000, whether it was $50,000, those amounts were insignificant to the whole operation. It may sound foolish when we say $50,000, but it is relative to the amounts that were involved that it becomes rather insignificant.

Q. Now, the amounts that you have talked about then, that you might have been indebted to Mr. Lafount for, such as $12,500, arose when Lafount would take his own money out of his own account and either buy something for you, buy something for your radio stations or pay a bill for them or lend them money?

A. That is right, or buy a piece of real estate or make a contract or buy a transmitter or radio station or an interest in one or lay out some construction job, which we have done and which runs sometimes into hundreds of thousands of dollars.

Q. He never lent you money personally, though?

A. No. You mean personal loans?

Q. Yes.

A. They were the result of this work; well, I would not even say that. I do not know whether I have, but occasionally I have asked, I have said—have you got some cash?

510 Q. How much did you get?

A. Anywhere from $1,000 to $5,000, which I would take in cash if I needed it.

Q. He would get that back in a short time, would he?

A. No, I would not say that. It would be credited to my account or I owed it to him. You see, counsel, you have got to get this picture in mind, that is, keep in mind certain facts in order to get a true picture so that it does not seem peculiar.

You are now reviewing an association with accountants and attorneys of about 25 years, an association with Mr. Lafount for over ten years, who was entrusted, based on his

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knowledge and experience, to invest for me a couple of million dollars in radio.

Q. I realize that, Mr. Bulova, and I am fully appreciative of the fact.

A. I do not want it to seem complex, it is just one of those things.

Q. I am not going to ask you about any details that you do not understand.

A. You probably will never find, if there was in this accounting or record, you will never find anywhere that I ever saw a record except where they would more or less tell me how I stood, that is about all, that was the situation.

511 When he told me he wanted to take the station, whether he should sell securities, I said it would not be necessary, I would let him have the money and I would be glad to.

Q. I appreciate that.

Mr. Fisher: Just answer the questions.

By Mr. Marks:

Q. I do not like to interrupt your discussion, but I would like to ask questions specifically and I think we will complete this examination much quicker.

Now, these personal loans that Mr. Lafount gave you, or may have advanced to you from time to time, did they ever run up to $25,000 or $30,000?

A. I imagine so, yes, in his jobs—

Q. Not as to any jobs. I am talking about personal loans he may have given to you.

Mr. Fisher: Or moneys advanced.

By Mr. Marks:

Q. Not for his business connections.

A. Cash loans?

Q. Were they frequent?

A. I do not know.

BLEED THROUGH

Q. Were they frequent?

A. No, not that kind of loans.

Q. They were very unusual?

A. That is right.

Q. We have then the transaction whereby 700
512 shares were acquired for $52,500 through money which you advanced. The next thing that happened with reference to the acquisition of the stock was $5,000 was loaned to George Crockwell and 200 shares of his stock, common stock, were taken as security. You previously mentioned that transaction. Can you give us your recollection of what took place at that time?

A. Well, I remember that was a loan I made and they told me it was not paid and we had to subsequently foreclose that loan.

Q. When you say "we," foreclosed on your account, it was your money?

A. That is right.

Q. Do you know what subsequently happened with reference to that?

A. That is right, when they foreclosed that loan, they bought that stock, they foreclosed it because I made the loan, but they bought the stock in my name, which I objected to because I was not interested in that station and it was immediately, I think, transferred to Sanford Cohen, if I remember correctly. That is what happened at that time.

Q. And do you remember how much, if anything, Sanford Cohen paid you for those 200 shares which were transferred to his name?

A. I was eventually paid for all of it. At the
513 time the loan was foreclosed, I think the stock was bought for $100 and I think he gave me $100 back and assumed the responsibility for the balance.

Q. I show you Commission's Exhibit 11 and ask you if you can identify that?

A. Yes, that is probably the stock I bought at that time which went to him.

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Q. Commission's Exhibit 11 is a statement signed by you?

A. Yes.

Q. That you have transferred 200 shares which were foreclosed from Mr. Crockwell to Sanford Cohen?

A. That is right.

Q. That was subsequently reported to the Commission, I believe?

A. That is right. I probably have not seen it since that time until just now, when you showed it to me.

Q. There has been some discussion, Mr. Bulova, about an application filed by WORL, shortly after Mr. Lafount and Mr. Cohen purchased the 700 shares, whereby an agreement was made to obtain permission to operate full time, and at that hearing on the application a balance sheet was introduced which showed assets of WORL amounting to cash in bank of $25,362.11. Mr. Lafount has testified that he had $25,000 available for that purpose. He did not
514 remember whether that money came from you or did not. Do you have any recollection of having advanced $25,000 for WORL at that time?

A. I would not remember.

Q. Do you have any recollection having discussed that matter with Mr. Lafount?

A. No, I would not know anything about that.

* * * * *

531 Q. Now, with reference to your dealings with Sanford Cohen, did you ever discuss the purchase of WORL stock with Mr. Sanford Cohen?

A. No, but he discussed it with me.

Q. He discussed it with you?

A. He just told me. I knew he and Mr. Lafount were acquiring that station.

Q. Do you remember when that conversation took place, before or after the purchase?

A. I would not remember.

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533 Q. Did you know how many shares of stock Sanford Cohen and George Cohen were acquiring in WORL at the time the original transaction took place?

A. No.

Q. You knew they were in on it with Lafount?

A. Yes, I knew jointly the three of them were going to own that station. I do not know just what their understanding was, on what basis, that I do not know. That was their personal matter.

Q. With reference to the Crockwell loan of $5,000, which subsequently was paid, in July of 1937, just three months after this transaction, after the purchase of the WORL stock, did Mr. Cohen discuss that with you?

A. What do you mean, discuss it with me?

Q. Did he tell you that he thought you ought to
534 make your loan of $5,000 to Crockwell?

A. I do not know whether he came to me or Lafount. I do not know.

Q. Did anybody guarantee that loan?

A. That loan was made against this stock which we foreclosed.

Q. Did anyone guarantee it?

A. When they foreclosed it I was annoyed a little bit about it because it was foreclosed in my name and I was not the purchaser.

Q. Was there a personal guarantee on the note in addition to a collateral on the stock?

A. I guess Mr. Crockwell—

Q. In addition to Mr. Crockwell's liability on the note, did anybody tell you you would not lose any money by virtue of this transaction?

A. No, I did not think it was necessary.

Q. You did not think it was necessary?

A. I did not think it was necessary.

Q. The stock was sufficient security?

A. I do not know about that either, that was their business.

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Q. After Exhibit 11, which you previously identified as the bill of sale, dated September 30, 1938, made by you to Sanford Cohen, did you receive payment of this
535 $5,100 which you had invested in this deal?

A. Subsequently?

Q. Yes.

A. Yes, I got paid.

Q. How?

A. I was told by him, that is, as far as Cohen was concerned, they were trying to collect first of all the balance or the deficit of the judgment from Crockwell. I was told if they could not collect it he would make it good, which he did.

Q. Who?

A. Sanford Cohen.

Q. He did pay it back to you?

A. Yes.

Q. How did he pay it to you?

A. I do not know even how that was done. It was paid off at one time when I needed the money and he might have paid it off one way or another.

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548 ROBERT C. NORDBLOM, called as a witness for and on behalf of the Commission, being first duly sworn, was examined and testified as follows:

Mr. Marks: Mr. Guest will conduct the examination.

Direct examination by Mr. Guest:

Q. Where do you reside?

A. 77 Reservoir Road, Quincy, Massachusetts.

Q. What is your occupation?

BLEED THROUGH

A. Real estate business.

Q. How long have you been engaged in the real estate business?

A. About 20 years.

Q. Were you in the real estate business in 1936?

A. Yes, sir.

Q. What is the name of the company?

A. I am president of a company called the Robert A. Nordblom Management Company.

Q. You hold what office in that company?

A. I am president and the owner of the company.

549 Q. In or about July, 1936, Mr. Nordblom, did you acquire an interest in Broadcasting Service Organization, Inc., the licensee of Station WORL in Boston?

A. Yes, sir.

Q. Will you relate briefly the circumstances surrounding your acquisition of an interest and the extent of your interest?

A. As I recall it, sometime prior to July, 1936, the station had hired space for studios in the Miles Standish Hotel in which I was a large stockholder, and which hotel our company managed. Subsequently the station had difficulty paying their rent and, as a result of that, and difficulty in securing their financial statements, we eventually bought 50 percent of the stock.

Q. "We" meaning whom?

A. Our company did, or one of our corporations did; and I was the nominee and the real owner.

Q. What interest did you acquire at that time?

A. As I recall it, we acquired a 50 percent interest in the so-called Class B stock, which I believe was the voting stock.

Q. Yes. I think the record shows that in the reorganization, at the time at which you acquired your interest, there were 1,000 shares of A stock, non-voting, so-called preferred stock, and 1,000 shares of B stock, which was the

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voting stock. I believe the records filed with the
550 Department of Corporations and Taxation in Massachusetts show that on or about July 3 you did acquire 500 shares of B stock.

A. Yes, sir.

Q. Did you become an officer of Broadcasting Service Organization, Inc.?

A. I think I did. I do not recall. The record will show that.

Q. Again, the record shows that you became president of the Broadcasting Service Organization, Inc., and a director at the same time. Will you tell us with whom you were associated at the time in the Broadcasting Service Organization?

A. There was a man by the name of Crockwell—

Q. George A. Crockwell?

A. Yes, sir; a man by the name of William Eynon, and a man by the name of James Phelan.

Q. Will you relate the progress of the Broadcasting Service Organization after you acquired this interest of 500 shares of the B stock? What happened?

A. As I recall it, I was only interested in the station for less than a year. We subsequently sold it to Mr. Lafount and his associates.

Q. During the course of that year, or approximately one year, the station did not prosper?

551 A. No, sir. As I recall it, it was losing money.

Q. Was it your desire or your wish to relinquish or sell your interest in the corporation?

A. Yes, sir.

Q. Had you had any offers or did you have any offers during the period when you first came in, in 1936, until March, 1937?

A. There were rumors of people being interested in the station and interested in buying it, but nothing direct or definite.

Q. No one approached you as president of the corpora-

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tion, evincing an interest in purchasing the station or making an offer for it?

A. No, sir. I believe that I tried to sell it to the Boston Herald myself. As I recall it, that was the only direct instance.

Q. When did you first find out that someone was interested in purchasing the station?

A. I don't know. I think it was in the early part of 1937 that a man that was associated with me, named Breen, John A. Breen, talked with a party named Jerry Slattery, who was, I believe, the manager at WCOP, and I believe it was somewhat as the result of that that the final connection was made with Mr. Lafount.

Q. You say this was in early 1937?

552 A. I think so. I would not be sure whether it was the latter part of 1936 or the early part of 1937; but I think it was the early part of 1937.

Q. Would it refresh your recollection if I were to say that the minutes of the Broadcasting Service Organization of March 9, 1937, specifically authorized George A. Crockwell and yourself to commence negotiations looking forward to the sale of the assets of the corporation, or of the sale of the stock of the corporation?

I believe that has been introduced as a Commission exhibit.

A. During the month of March we sold the station or the company.

Q. Do you recall whether the preliminary negotiations for the sale took place prior to the date on which you were authorized, according to the minutes of the corporation, to enter into negotiations?

A. There must have been some negotiation. I do not recall. I think it all happened fairly fast, but I really don't remember.

Q. What is the first event that you recall that brought you, as the largest voting stock holder, and your associates

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together with Mr. Lafount, who I understand is the person you were put in touch with?

A. I remember having dinner or lunch with Mr. Lafount. I believe it was in the early part of 1937, at the Sheraton Hotel, Boston. There were others present, including Mr. Breen, I believe, and possibly Eynon and possibly Crockwell. I cannot recall whether there were three of us or five of us.

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The Examiner: Who is Mr. Eynon? He has not been mentioned here this morning, has he?

Mr. Guest: Yes. He was described by the witness, Mr. Nordblom, as one of his original associates in 1936.

The Examiner: Oh, yes; I remember now.

Mr. Guest: That was when he first acquired his interest in the corporation.

By Mr. Guest:

Q. You believe that it was at this dinner at the Sheraton—

A. A meal of some kind.

Q. —where you met with Mr. Lafount, and you believe that Mr. Eynon and Mr. Breen and possibly Mr. Phelan were present?

A. Possibly Mr. Crockwell. I don't recall how many there were there.

Q. This meeting was solicited by what party?

A. I don't know who organized it, but my guess would be that Mr. Breen and Mr. Slattery probably attended the dinner or lunch.

Q. Is that your best recollection?

A. Yes, sir.

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Q. What was discussed at that meeting?

A. The possible sale of the Broadcasting Service Organization, Inc., stock, or the station.

Q. Were you authorized to negotiate on behalf of any of the other stockholders?

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A. At that point, possibly no. It was just a matter of preliminary talks.

Q. Did you arrange tentatively on the extent of the interest to be transferred or the consideration of the transfer?

A. No, sir. That was completely a preliminary meeting.

Q. Do you recall, after this meeting, that you went down to the station or the studios with Mr. Lafount?

A. No, sir.

Q. When was the next meeting you had with Mr. Lafount or persons designated by him to conduct negotiations on behalf of himself?

A. The next I recall a meeting, Mr. Lafount was at the closing.

Q. Who was authorized on your behalf to conduct the negotiations to arrange for the extent of holdings to be transferred at a price?

A. I don't think anyone was authorized on my behalf. I think it was just arranged.

555 Q. I refer you to an agreement dated March 16, 1937, entered into between George A. Crockwell, William Eynon, James Phelan, and yourself, in which it is stated:

> "Whereas, George A. Crockwell and Robert C. Nordblom are about to enter into a contract with Harold A. Lafount for the sale of 700 shares of said Class B stock for the sum of $52,500, and George A. Crockwell and Robert C. Nordblom agreed to discharge from this amount all of the debts of the Broadcasting Service Organization, Inc., except certain leases and other contract obligations . . ."

That is Commission's Exhibit No. 2. I show you Commission's Exhibit No. 2, part of which I have just read. Do you recall this contract?

A. Yes, sir.

Q. This contract was entered into when?

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A. The 16th of March, 1937.

Q. Is this your recollection of the first and earliest date that the amount of stock to be transferred and the consideration was known and agreed upon by the parties?

A. Yes, sir.

Q. Under this agreement is it your understanding that the amount of stock to be transferred was 700 shares of Class B stock?

A. That is what it says; it must have been.

Q. You signed this; you were a party to this con-
556 tract?

A. That is correct.

Mr. Fisher: That is not one between him and Mr. Lafount, is it?

Mr. Guest: That is correct. Mr. Lafount is not a party to this contract.

By Mr. Guest:

Q. In signing this contract what were you personally proposing to dispose of? I show you Commission's Exhibit 2 again and indicate that Mr. Eynon and Mr. Phelan both agreed to transfer to Mr. Crockwell 150 shares of their Class B stock.

The Examiner: 150 shares each?

Mr. Guest: Yes; representing 300 shares of Class B stock.

By Mr. Guest:

Q. I ask you what it was that you were proposing to sell: how much of your interest were you proposing to sell?

A. I don't recall. It says 700 shares here. I don't know how that was divided between Crockwell and myself.

Q. You held 500 shares of B stock?

A. That is correct.

Q. And, referring to Commission's Exhibit No. 3, an

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agreement of the same date between Mr. Lafount, Mr. Crockwell, and yourself, reference is made to the sale—in fact, this is a contract for the sale—of 400 shares of B stock for a consideration of $48,000.

557 A. Yes.

Q. Is it your understanding that this agreement between you, Crockwell, Eynon, and Phelan, and your agreement with Crockwell and Lafount, were part and parcel of the same transaction involving the transfer of the 700 shares of B stock?

A. That is correct; yes, sir.

Q. And in the transfer of the 700 shares, how much did you transfer? How much did you agree to transfer?

A. 400 shares.

Q. That is, of your own holdings of B stock?

A. Yes, sir.

Q. And the transfer of your 400 shares of B stock was part and parcel of the transfer of these additional 300 shares, wherever they may have come from?

A. Yes, sir, as far as I can recollect.

Q. What was the consideration, the price, for the 700 shares of stock?

A. I believe it says $52,500 in there.

Q. Mr. Nordblom, was this ttransaction, in which you agreed and understood that you were transferring 400 shares of your B stock, together with 300 shares of Mr. Eynon's and Mr. Phelan's, representing 700 shares, at $52,500, satisfactory to you?

558 A. Yes.

Q. Did you ever complain to Mr. Lafount that you were not satisfied with the transaction?

A. No, sir.

Q. Did you ever indicate to Mr. Crockwell that you were dissatisfied with the transaction?

A. I don't believe so.

Q. Did you ever complain to Mr. Lafount?

A. No, sir.

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Q. Or Mr. Crockwell?

A. No, sir.

Q. Did you ever write Mr. Lafount, indicating your dissatisfaction with the transaction? I am now referring to the 400 shares of B stock.

A. No, sir.

Q. Did you ever give Mr. Crockwell, in your opinion, any reason for his believing that you were dissatisfied with the transfer of the 700 shares and your 400 shares of B stock?

A. Not that I recall.

Q. Were you made an officer of the corporation after the transaction was closed, on March 25, 1937?

A. I believe I remained as a director.

Q. And you still had 100 shares of B stock that was not sold?

559 A. Yes, sir.

Q. Is there any other stock remaining in your name?

A. I believe there were 300 other shares that remained in my name.

Q. So that there were 400 shares of B stock remaining in your name, and you owned how much?

A. 100 shares.

Q. How did it come about that you sold 300 shares of B stock and permitted the stock to remain in your name?

A. I don't recall, but I believe it was a matter of convenience to the buyers.

Q. There was no question about a dispute between you and the purchasers, was there, as to whether you were making any claim against these 300 shares of B stock?

A. No, sir.

Q. Do you recall the circumstances of the conversations you had, and with what parties, which resulted in the retention of the shares in your name?

A. No, sir; I do not.

Q. Did Mr. Lafount ask you if you minded having the station remain in your name?

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A. I don't recall whether it was Mr. Lafount or Mr. Davison, or just who it was.

Q. But you have a recollection that someone asked you if you would be willing to permit the stock to remain
560 in your name?

A. Someone must have asked me.

Q. Did you vote the stock?

A. I attended the annual meetings up to the time I sold my last 100 shares.

Q. Up until September, 1940?

A. Yes. Therefore I presume that I must have voted the stock.

Q. It is your best recollection that you did vote 400 shares of B stock at the meetings which you attended?

A. I think so.

Q. Did you have any differences of opinion with the other stockholders in any policy issues which came up before the stockholders' meetings?

A. No, sir.

Q. How did you regard yourself—as the owner of 400 shares of B stock? Did you feel that you could vote that 400 shares of B stock as you pleased?

A. I only regarded myself as the owner of 100 shares of B stock.

Q. So that, so far as 300 shares of the 400 were concerned, you did not exercise any independent judgment of your own?

A. There was never any controversy, in any event.

Q. Do you know Sanford H. Cohen, or George
561 Cohen?

A. I met him for the first time this morning.

Q. You never knew them before? You never knew them and do not recall them?

A. I never met Mr. George Cohen. I simply met Mr. Sanford Cohen this morning.

Mr. Guest: That is all. I have no further questions.

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The Examiner: You may cross-examine, Mr. Fisher.

Cross examination by Mr. Fisher:

Q. Referring to the last question that Mr. Guest asked you, you say you just met Mr. Cohen this morning. Did you hear his name mentioned in the original transaction away back in 1937?

A. Yes, sir; at the closing I heard his name mentioned.

Q. Did Mr. Lafount tell you that he was interested in part of this stock?

A. That is correct, sir.

Q. Now, Mr. Nordblom, going back over this transaction, you bought in for 500 shares in 1936; is that correct?

A. Yes, sir.

Q. And that was 50 percent of the voting stock at that time, and you understood that?

A. Yes, sir.

Q. And the original stockholders were Mr. Crockwell, Mr. Eynon, and Mr. Phelan; is that right?

562 A. Yes, sir.

Q. They had, or Crockwell had, 400 shares; Eynon, 300; and Phelan, 300 shares. Can you remember how you got your 500 shares? Was it not from all three of them?

The Examiner: Are you talking about Class B stock?

Mr. Fisher: Yes. Only the voting stock, I am talking about.

By Mr. Fisher:

Q. As a matter of fact, you never had any A stock, did you?

A. No, sir. My recollection is that each of them gave up a pro rata part of their stock to put us in the picture.

Q. And after you purchased your 500 shares, that left

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Mr. Crockwell with 200 shares, Mr. Eynon with 150 shares, and Mr. Phelan with 150 shares?

A. Yes, sir.

Q. And this was in 1936?

A. Right.

Q. Then we come to the transaction of 1937. During the month of March, as nearly as you can recollect, these negotiations were going on, and the first contracts of any kind were signed on March 16. I believe that is what the testimony shows here, when you were shown those two contracts.

Q. Yes, sir.

563 Q. That called for the transaction in Commission's Exhibit 3, which is an agreement between Mr. Lafount, Mr. Crockwell, and Mr. Nordblom, for 400 shares at $48,000. Do you remember that as being part of the transaction?

A. Yes, sir.

Q. And also another contract between you and your associates for the disposal of 700 shares at $52,500. Is that correct?

A. Yes.

Q. So these transactions were all going on together; is that right?

A. That is right.

Q. Do you happen to remember the exact amount that Mr. Lafount bought in his own name?

A. I don't recall; no, sir.

Q. Was that just 400 shares that the three of you entered into a contract on, on the 16th?

A. Yes; I believe so.

Q. And then on the 25th, a few days later, you had a final contract disposing of all of the 700 shares?

A. That is right.

Q. And what was to be done with the money?

A. Yes.

Q. Whether you were to get a certain percentage of that?

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A. Yes.

564 Q. And was that percentage an amount that would save you whole or get you out of the transaction, or did it get you out of the transaction?

A. I believe it did.

Q. Is that what you had in mind in disposing of the stock?

A. We were naturally interested in getting in the clear.

Q. Was most of that money to go for paying off the indebtedness of the corporation?

A. By far the greatest part of it; yes, sir.

Q. And that is what actually did happen?

A. That is what happened.

Q. At that time you retained 100 shares of stock, and Mr. Lafount had 400. Did Mr. Crockwell still have stock in it?

A. I believe he did.

Q. Did he not have 200 shares?

A. Yes; I believe he did.

Q. Shortly thereafter, then, did Mr. Crockwell say anything to you about being dissatisfied with the whole deal?

A. I believe he did, sir.

Q. As a matter of fact, particularly at the time of the deal he was dissatisfied, was he not?

A. At the time of closing, he evidenced dissatisfaction.

Q. Did that continue on from time to time after

565 that time?

A. Yes, sir. I don't know how often he was in direct touch with me, but others told me he was dissatisfied.

Q. Did he tell you himself, too, sometimes?

A. I believe he did; yes, sir.

Q. This was seven or eight years ago, but you do remember that Mr. Crockwell was almost immediately dissatisfied with the deal?

A. Definitely.

Q. Of course you do not know of your own knowledge

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what he might have told Mr. Lafount or Mr. Cohen about his dissatisfaction or your dissatisfaction?

A. No, sir.

Q. You do remember that he was at the original transaction on March 25?

A. Yes.

Q. Do you remember indirectly whether there were 300 shares put in my name for a while? Do you remember that transaction?

A. I believe there was.

Q. So there was a 400-share deal with Mr. Lafount and a 300-share deal with someone else?

A. Yes.

Q. And Mr. Cohen's name was mentioned as the prospective purchaser?

566 A. That is correct.

Q. I believe you have testified that you individually, on the first transaction, as near as you can remember, did not make any complaint about the distribution and the sale?

A. That is right.

Q. And if any complaint was made, it came from Mr. Crockwell?

A. Yes.

Q. And you do know that he did make such complaints?

A. That is correct.

Q. Do you remember shortly thereafter that some difficulties came up about the station in connection with a woman named Whitwell?

A. I heard that that happened; yes.

Q. Was not that shortly after the transaction, or within a year thereafter?

A. I believe so.

Q. You knew about those differences with her from then on, almost?

A. I heard of them.

Q. You knew that there were some lawsuits over it?

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A. Yes; I did.

Q. And you knew that that went on for a number of years?

A. Yes.

Q. I believe you testified that you remained on the
567 board of directors and attended all the annual meetings until you finally disposed of your stock, and you were a stockholder and voted your 400 shares of stock?

A. Yes.

Q. Between your 100 and the 300 that you had made tentative arrangements to dispose of—

Mr. Marks: I object to the word "tentative." He had disposed of it.

The Examiner: He had disposed of 300 shares.

Mr. Fisher: I will say, then, definite arrangements.

By Mr. Fisher:

Q. You remained on the board of directors and did vote that stock for six or seven years afterwards?

A. Whatever the time was.

Q. You remember that you got out last year, 1943?

A. No. I was out before 1943.

Mr. Marks: I believe the record shows that on September 24, 1940, Mr. Lafount bought the 100 shares at $1,500.

Mr. Fisher: Yes; but after that he remained on as a stockholder and voted the stock every year. Is not that correct?

The Witness: I do not recall.

By Mr. Fisher:

Q. I show you Exhibits 10, 11 and 12.

Mr. Marks: Let us ask Mr. Nordblom about that.
568 Mr. Fisher: I am going to show him the minutes themselves.

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By Mr. Fisher:

Q. The minutes of the annual stockholders' meeting of January 22, 1940, were put in the record as Exhibit 10. Does that show, Mr. Nordblom, 400 shares of stock, and you being present and voting them?

A. Yes, sir.

Q. The minutes of the annual stockholders' special meeting of March 18, 1941, were put into the record as Exhibit 11. Is that (indicating) your signature?

A. Yes, sir.

Q. Does that show you present and voting 400 shares of Class B stock?

A. That is my signature.

Q. And the minutes of the annual meeting on March 18, 1942, filed as Exhibit 12—does that show your signature as being present and voting 400 shares of stock?

A. That is right.

Q. The meeting of 1943—does that (indicating) show you as being present, Robert Nordblom, and Mr. Lafount voting your stock by proxy?

A. Yes, apparently.

Mr. Fisher: That is the last meeting, I believe, that they had.

569 *By Mr. Fisher:*

Q. You continued to take an interest in the corporation and shared in the corporation up to 1943?

A. I apparently did.

Q. And Mr. Lafount would come up to Boston from time to time and discuss matters with you throughout that period?

A. Only at these meetings.

Q. Do you remember that at times during the first few years he would come up and confer with you on the operation of the station?

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A. I think he was up there sometimes other than the meetings; I believe so, sir.

Q. So far as you know, from your standpoint, you have testified that at least there has been no controversy on the first 300 shares, and if there was any controversy at all it was with Mr. Crockwell?

A. That is right.

Q. And you do not know what he said to Mr. Cohen or Mr. Lafount, either one, with reference to that matter?

A. No, sir.

Q. Coming to the remaining 100 shares that you finally disposed of in 1940, you say, was there not some misunderstanding as to that and you were not fully satisfied with it at the time?

A. That is right.

570 Q. As a matter of fact, was not that finally disposed of and you were finally satisfied in the fall of 1943?

A. That is right.

Q. At which time there was an additional payment of $750?

A. That is correct.

Q. And that matter had been pending over this two or three-year period for final settlement?

A. I had indicated that I was dissatisfied with the amount paid me on that stock.

The Examiner: The 100 shares?

The Witness: Yes, sir.

By Mr. Fisher:

Q. And that was a matter that went on, roughly, from 1940 to 1943. Is that right?

A. That is right.

Q. These 300 shares, by the way, are your stock? That was not Crockwell's stock, was it?

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The Examiner: Which 300 shares are you speaking of?

Mr. Fisher: That is in dispute as not being satisfactory.

Mr. Marks: There is no dispute about his being dissatisfied. The original 300 shares were kept in his name although he had sold it.

By Mr. Fisher:

Q. Was it your stock?

571 A. I don't know whether it was or not. The books will show that.

Q. You had 500 originally?

A. Yes.

Q. And you sold 100 in this deal with the 400?

Mr. Marks: What do you mean? He sold 400 at that time.

Mr. Fisher: All right.

By Mr. Fisher:

Q. Part of it was 100, and then there were 300 shares that were in abeyance. That was your stock?

A. If it was left in my name it probably was.

Q. Because nobody else had 300 shares of stock. Is not that correct?

A. That is right; so it must have been my stock.

Q. Yes. I think that this agreement here shows that Crockwell was obligated for 300 shares and Nordblom for 400 shares, and you added 300 shares more to that; and that 300 was not Crockwell's?

A. Apparently not.

Mr. Marks: I think it would be well to get on the record that Mr. Crockwell sold nothing in the original transaction of 100 shares.

Mr. Fisher: That is correct. He sold 150 of

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Eynon's, 150 of Phelan's, and none of his own; 100 to Nordblom, and then Mr. Nordblom put in 400 instead of 300. That left Mr. Crockwell with
572 200 and Mr. Nordblom with 100.

Mr. Marks: The original 700 shares was made up of Eynon's and Phelan's stock together with Nordblom's stock. Crockwell retained his original 200 shares.

Mr. Fisher: That is right.

By Mr. Fisher:

Q. As to the original 500, part of that came from Crockwell the year before?

A. Yes.

Q. As I say, these 300 shares that remained in your name were your shares; they were not Crockwell's at all?

A. That is correct.

Q. So that if there was any misunderstanding, so far as Mr. Lafount was concerned, it was about these 300 shares that remained in your name?

Mr. Marks: I object to that. This witness cannot testify to what Mr. Lafount understood.

The Examiner: I think it is quite leading.

Mr. Fisher: I have a right to lead on cross examination, your Honor.

The Examiner: Read the question, please, Mr. Reporter.

(The pending question, as above recorded, was read by the reporter.)

Mr. Fisher: Assuming that there was a misunderstanding.

Mr. Marks: He is asking, so far as Mr. Lafount is
573 concerned. This witness did not talk to Mr. Lafount.

Mr. Fisher: I asked, was not that the 300 shares that were involved in the misunderstanding? That is the only purpose of it.

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The Examiner: Misunderstanding with whom? Not with this witness.

Mr. Fisher: With Crockwell.

The Examiner: This witness said he knew nothing about any misunderstanding or dissatisfaction. I think the objection is good, and I will sustain it. You can reform your question.

By Mr. Fisher:

Q. Then, if there were any misunderstanding at all with reference to the stock, it would be these 300 shares that remained in your name?

Mr. Marks: I object. This witness says he does not know of any misunderstanding. He has not so testified here.

The Examiner: I rather think that is his testimony. Sustained.

By Mr. Fisher:

Q. Then, as you say, you do not know that Mr. Crockwell had made any complaint to Mr. Lafount or to Mr. Cohen?

A. I said he did.

Q. You knew that he had?

A. Yes, sir.

574 Q. I ask you about the Whitwell matter. Did you know that shortly thereafter, within a year, she claimed some interest in this stock?

A. Yes.

Q. And that went on for a period of years?

Mr. Marks: I object to Mr. Fisher's saying that she claimed an interest in the stock. The evidence shows that there was a money claim.

Mr. Fisher: There is a letter on that, your Honor.

Mr. Cohen: If I may say something, Mr. Ex-

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aminer, there is a letter in evidence, a statement in Mr. Eynon's testimony in 1943, before the Select Committee, in which he definitely states that Mrs. Whitwell had a claim against all this stock.

Mr. Marks: The record speaks for itself.

Mr. Fisher: That is in the record, and the record speaks for itself, as Mr. Marks says.

By Mr. Fisher:

Q. You did know about the Whitwell claim between 1937 and 1943?

A. In a general way; yes.

Q. You attended some of the directors' meetings the first few years, did you not?

A. Yes, sir.

Q. Was there any comment in the directors' meetings with reference to Mr. Crockwell's dissatisfaction
575 with the whole deal?

A. Yes, sir. I can enlarge upon that. Mr. Davison happened to be my personal attorney and he continually kept me posted on the station happenings, and he spoke about that.

Q. So you knew that that difference was going on?

A. Yes, sir.

Q. Did you know the attorney for Mrs. Whitwell?

A. No, sir.

Q. You watched the station from time to time, when you were still a stockholder and remaining as a stockholder, for several years? You watched its progress?

A. Oh, yes. I used to ask for statements, and so forth.

Q. Did the station get in better financial condition?

A. Yes.

Q. It finally became a paying proposition?

A. From what I heard; yes, sir.

Q. Did you see the statements themselves?

A. It improved continuously over the time we had it.

Mr. Fisher: I think that is all.

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The Examiner: Is there anything on redirect examination?

Mr. Guest: Yes, sir.

Redirect examination by Mr. Guest:

Q. Did you or did you not sell 100 shares of B stock in September, 1940?

576 A. I know I sold 100 shares of B stock. As to the date, I don't know. It was read into the record, and that is when I assume it would be.

Q. What arrangements did you make to remain as a voting stockholder of 100 shares during the period shown in the minutes from which Mr. Fisher read?

The Examiner: I thought he remained a stockholder of 400 shares.

By Mr. Guest:

Q. What arrangement or understanding did you have to remain as a voting stockholder for 400 shares?

The Examiner: And with whom?

A. I wondered that myself, as I had forgotten that I did remain. But my guess is that probably I was glad to remain because the station was still a tenant of the hotel that I ran, and it was good business for me to watch the progress of the station, and so forth. That would be my guess.

The Examiner: Someone must have invited you to remain as a stockholder and continue to vote this stock. Who was that person?

The Witness: If anyone did, it was either Mr. Lafount or Mr. Davison, one of the two.

The Examiner: Is it usual or customary to remain as a record stockholder and continue to vote stock

577 after you have long since ceased to be the owner of the stock?

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The Witness: No, sir.

The Examiner: Then you certainly remember who it was that invited you to remain as a stockholder.

The Witness: I don't know whether it was Mr. Lafount or Mr. Davison. It might have been either.

The Examiner: Who is Mr. Davison?

The Witness: The local Boston attorney for Station WORL. He happens to be my personal attorney and the attorney for all our companies. So he might very well have been the one to ask me.

The Examiner: What was the consideration, if any, for which you rendered such service?

The Witness: Nothing.

The Examiner: Why did you do it?

The Witness: As I said before, my guess is that I was glad to do it, because the station was a tenant at the hotel, and it gave me an opportunity to watch the progress of it, and so forth.

By Mr. Guest:

Q. Did you regard yourself as the owner of 100 shares of B stock after you ostensibly sold it in September, 1940?

A. No, except that I was dissatisfied with the sale.

Q. But you did not own the stock; you sold it.

A. I sold it; that is right.

578 Q. Did you ever hear that—

A. Maybe I should enlarge upon that further. At the time I sold that stock it was indicated to me by Mr. Davison that this station might be sold or possibly would be sold, and therefore it would be nice if I sold my stock, which I agreed to do. Subsequently the station was not sold, and I was dissatisfied. That may have been another reason why I was glad to stay as a director to see what was going on.

Q. Did you ever hear it discussed or was it ever your im-

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pression that anyone other than Mr. Lafount was the person interested in the acquisition of Station WORL? Referring back to March, 1937, did you ever hear or did you ever understand that anyone else other than Mr. Lafount was interested?

A. Mr. Fisher appeared at the closing, and Mr. Cohen's name was mentioned as the would-be owner of 300 shares, I believe.

Q. Did the name of Arde Bulova ever come up?

A. His name was never mentioned.

Q. Mr. Nordblom, do you appear here under subpoena from the Federal Communications Commission?

A. Yes, sir.

Mr. Guest: That is all.

Recross examination by Mr. Fisher:

Q. On the matter of remaining on, did you remain
579 on partially because this whole matter was not settled in 1943?

Mr. Guest: What whole matter?

Mr. Fisher: The stock sales.

Mr. Guest: Of the 100 shares?

Mr. Fisher: All of them.

The Examiner: Just a minute. There is no evidence in this record that indicates that he was not entirely satisfied with the sale of the 300 shares or that he had any complaint whatever about that. I suggest you reform your question, Mr. Fisher.

By Mr. Fisher:

Q. Did you remain on from 1940 to 1943 on account of your being dissatisfied in connection with the matter of the determination of the 100 shares?

A. To the best of my recollection, that may have been a part of the reason why I stayed there, because I was dissatisfied.

POOR COPY

Q. And you did remain there until 1943?
A. According to the records, apparently I did, sir.

Mr. Fisher: That is all.
Mr. Guest: I have no further questions.

(Witness excused.)

Mr. Marks: Mr. Examiner, at this time, with Mr. Fisher's consent, I would like to introduce into the record a letter written by Mr. Fisher, dated March
580 31, 1937, reporting the sale of 400 shares of Class B stock. I will ask to have it marked Commission's Exhibit No. 31.

Mr. Fisher: That is a letter that accompanied the filing of the first 400 shares of Mr. Lafount?

Mr. Marks: That is correct.

Mr. Fisher: The application itself is in the record.

Mr. Marks: That is right.

The Examiner: There is no objection to its being admitted?

Mr. Fisher: No, sir.

The Examiner: It will be admitted.

(The letter referred to was marked Commission's Exhibit No. 31 and received in evidence.)

Mr. Marks: There is another matter, Mr. Examiner. At the previous hearing in New York City a balance sheet was introduced as Commission's Exhibit 10. In connection with that balance sheet I would like to offer testimony by Mr. Lafount given in a previous hearing before this Commission, in Docket No. 4206. That testimony, beginning at page 58 of Docket 4206, is as follows—

The Examiner: Will you take the witness stand, Mr. Lafount?

BLEED THROUGH –

581 Whereupon, HAROLD LAFOUNT, called as a witness on behalf of the Commission, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Marks: (reading)

"Q. Now, Mr. Lafount, have you had prepared a financial statement of the Broadcasting Service Organization, Incorporated?

"A. I have.

"Q. Are you familiar with the books of the corporation showing the assets and the liabilities as of the present time?

"A. Yes, sir.

"Q. Handing you herewith Exhibit 28 for Identification, I will ask you to state what that consists of.

"A. A list of the assets and liabilities of the corporation.

"Q. And are you familiar with all of the items contained thereon?

"A. I am.

"Q. And have you had occasion to have that prepared under your supervision and direction?

"A. Yes, sir.

"Mr. Fisher: At this time I wish to introduce Exhibit 28.

582 "The Chief Examiner: Any objection?

"(No response.)

"The Chief Examiner: Admitted.

"(Applicant's Exhibit No. 28 was received in evidence.)"

When I referred in that colloquy to "Applicant's Exhibit 28," Mr. Examiner, it is the same as Commission's Exhibit No. 10 in this proceeding.

Mr. Fisher: Will you read the rest of that? There are only two or three more questions. The rest of it deals with the making of improvements.

POOR COPY

Mr. Marks: Continuing with the discussion (reading):

"Q. What are your plans with reference to making these improvements? As to paying for them in cash, or any other plans?

"A. The amount is already available and they will be paid for promptly.

"Q. And by 'available' you mean that is shown in the statement there?

"A. It is.

"Q. And are you familiar with that item?

"A. I am.

"Q. And is the cash available for paying for all of these improvements?

"A. There is.

"Mr. Fisher: That is all."

583 Is there anything more that you want me to read?

Mr. Fisher: No.

The Examiner: Do you recall having given that testimony?

The Witness: I do.

The Examiner: Are there any questions of this witness?

Mr. Marks: I have no questions.

Cross examination by Mr. Fisher:

Q. What did you mean by "available," Mr. Lafount, if you remember?

A. Definitely I remember it meant that the money was available; I had it all ready. Had the pending application been granted, the money would have been available for the improvements at once.

Q. What did you mean by "available"—that you were going to get the money?

A. I had it all arranged for.

BLEED THROUGH –

Q. And you were going to put it in?

A. Yes, sir.

Q. Then when the statement said "Cash in bank"—I believe that is the wording—was that a mistake or a misstatement?

A. It was not in the bank to the credit of the corporation. It was in the bank. That might seem an evasion, but, as a matter of fact, it was not so intended. The money was
584 available, and it was a statement prepared to show just what the corporation would have. It was not shown as a liability, which was unfortunate.

Q. When you said it was in the bank, you did not mean to the credit of the corporation?

A. No, sir.

Q. And it was not to the credit of the corporation?

A. No, sir; it was not deposited to the credit of the corporation at that time.

Q. But that money was available for that purpose?

A. It was available for that purpose.

Q. You had arranged for it?

A. I had.

Q. I believe the application was denied, was it not, so that the money was never put up?

A. That is right.

Q. Just one further question. Was that preliminary statement prepared by somebody else and sent to you?

A. It was.

Q. Where was that prepared—in Boston?

A. It was.

Q. You then introduced that as your testimony at the time of the hearing?

A. That is correct.

Q. And if you made a statement that left the im-
585 pression that that money was actually up in cash to the credit of the corporation, that was a mistake or a misstatement?

POOR COPY

A. It was unfortunate, certainly. It had not been transferred, but it could have been any day or any minute.

Q. You did not intend it to show as actual cash in the bank to the credit of the corporation?

A. That is right.

Mr. Fisher: That is all.

Redirect examination by Mr. Marks:

Q. In whose account was that $25,000 which could be transferred to the credit of the corporation?

A. I had arranged for that money with Mr. Cohen.

Mr. Marks: That is all.

(Witness excused.)

The Examiner: Is there any other evidence?

Mr. Marks: The Commission has no further evidence.

The Examiner: Does the applicant have any further evidence to offer, Mr. Fisher?

Mr. Fisher: The applicant has no further evidence.

There were three exhibits which we were iven permission to introduce. I have sent them to the Commission and I suppose they are on file. They are Exhibits 10, 11, and 12. I personally delivered them to the Commission to be placed in the record.

586 Mr. Marks: We can check that later.

The Examiner: They will find their way into the record.

Mr. Fisher: Mr. Cohen wishes to make certain corrections in the minutes.

Mr. Marks: That comes later on. You can submit a memorandum.

The Examiner: The way to handle that is to prepare a letter setting forth the errors and request-

BLEED THROUGH – P

ing that changes or corrections be made, submit it to counsel for the Commission, and if approved by counsel for the Commission it will be brought to me and I will approve it, and then the reporters will make the necessary corrections.

Mr. Fisher: That will be prepared within the next week.

The Examiner: That will be all right.

Is there anything further now, gentlemen?

Mr. Marks: Nothing.

Mr. Fisher: That is all.

The Examiner: The record is closed.

(Whereupon, at 11:40 o'clock A. M., the record in the above-entitled matter was closed.)

OOR COPY

[Filed—September 28, 1944.]

588 **Applicant's Exhibit 1**

November 27, 1943

Mr. Harold A. Lafount
501 Madison Avenue
New York, N. Y.

Dear Mr. Lafount:

I acknowledge receipt from you of the sum of $750 in consideration of which, I release you from all claims and demands I may have against you not only on account of the purchase of 100 shares of the Class B stock of Broadcasting Service Organization, Inc., but from all other claims arising out of your purchase from me of both Class A and Class B common shares of Broadcasting Service Organization, Inc.

Very truly yours,

ROBERT C. NORDBLUM

BLEED THROUGH -

[Filed—September 28, 1944.]

589 **Applicant's Exhibit 2**

BROADCASTING SERVICE ORGANIZATION, INC.
(W O R L)
216 Tremont Street
Boston, Massachusetts.

BALANCE SHEET

December 31, 1943

Assets

Cash—State Street Trust Company	$40,662.39	
—On Hand	250.00	
		$ 40,912.39
Accounts Receivable	$30,441.44	
Less—Reserve for Bad Debts	1,000.00	
		29,441.44
Transmitter and Studio Equipment	$94,694.95	
Less—Reserve for Depreciation	53,446.20	
		41,248.75
Post-War Refund of Federal Excess Profits Tax		2,720.76
Deposit Receivable		425.00
Unexpired Insurance		190.01
Total Assets		$114.938.35

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LIABILITIES		
Accounts Payable and Accruals .	$ 7,885.43	
Reserve for Federal Income and Excess Profits Taxes	12,699.30	
TOTAL LIABILITIES		20,584.73
NET WORTH		$ 94,353.62
Made up as follows:		
Capital Stock—Class A—1,000 shares—No Par Value	$44,000.00	
Class B—1,000 shares—No Par Value	56,676.42	
Deficit—January 1, 1943	*$18,181.55*	
Deduct—Net Profit for the year ended December 31, 1943	11,858.75	
	6,322.80	
		$ 94,353.62

BLEED THROUGH –

[Filed—September 28, 1944.]

590 **Applicant's Exhibit 3**

WORL

Year	*Total Annual Receipts*	*Total Annual Expenses*	*Profit*	*Loss*
1938	$ 54,754.00	$ 66,179.00	———	*$11,424.00*
1939	83,866.00	82,703.00	$ 1,163.00	
1940	165,855.00	142,055.00	23,800.00	
1941	197,224.00	158,136.00	39,088.00	
1942	209,557.00	174,492.00	35,065.00	
1943	240,468.00	215,366.00	25,101.00	

POOR COPY

[Filed—September 28, 1944.]

591 **Applicant's Exhibit 4**

WORL, BOSTON, MASSACHUSETTS

Report dated March 11, 1936; filing date not shown:

Babson's Statistical Organ. Inc.	relinquished	968	shares
Winslow L. Webber	"	11	"
Leonard Spangenberg	"	10	"
Mary O. Hewins	"	10	"
Roger W. Babson	"	1	"

No par value stock.

George Crockwell	Received	400	shares
William H. Eynon	"	300	"
James K. Philan	"	300	"

$70,000. was paid for this stock.

Approved by Commission December 3, 1935.

Report dated July 29, 1936; filed August 13, 1936:

Robert C. Nordblom	500	shares	Class	B,	no	par,	voting
George A. Crockwell	200	"	"	"	"	"	"
William H. Eynon	150	"	"	"	"	"	"
James K. Philan	150	"	"	"	"	"	"

Report dated March 29, 1937; filed March 31, 1937:

Robert C. Nordblom	relinquished	100	shares	Class	B,	no	par.
William H. Eynon	"	300	"	"	A	"	"
		150	"	"	B	"	"
James K. Philan	"	150	"	"	"	"	"
		300	"	"	A	"	"

Harold A. Lafount received 400 shares Class B, no par.
George Crockwell " 600 " " A

Mr. Lafount paid $30,000. for stock received.

Mr. Crockwell paid $26,400. for stock received.

Transfer took place March 25, 1937.

BLEED THROUGH –

Report dated July 11, 1938; filed with FCC July 14, 1938, form 728:

	Common, Class "B"	*Preferred, Class "A"*
Harold A. Lafount, President & Director	400	0
Helen Rose, Treasurer	0	0
Robert H. Davison, Clerk & Director	0	0
Robert C. Nordblum, Director	400	0
George A. Crockwell	200	900
Lester Endlar	0	100

592 Report dated October 26, 1938; filed with FCC Nov. 22, 1938, form 730:

George A. Crockwell—Sold 200 shares common Class B, certificate No. B-1 and B-2 for 100 shares each, no par value, amount received $100.00. Date of transfer Sept. 30, 1938.

Sanford H. Cohen—Purchased this stock receiving certificates B-6 and B-7 for 100 shares each. Date of acquisition Sept. 30, 1938.

Report dated April 15, 1940; filed with FCC April 15, 1940, form 730:

George Crockwell—Sold 900 shares preferred Class A stock, certificate Nos. A-1 for 90 shares, A-3 for 455 shares, A-5 for 355 shares, no par value. Amt. received $2,450.00 Date of transfer March 8, 1939.

Harold A. Lafount—Purchased this stock receiving certificate No. A-6. Received stock March 15, 1939.

Report dated April 30, 1941; filed with FCC May 1, 1941, form 730:

Lester Endlar—Sold 100 shares preferred Class A certificate A-4 for $3,500.00. Date of transfer March 31, 1941.

Harold A. Lafount—Purchased this stock receiving certificate No. A-7, received stock March 31, 1941.

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Affidavit dated November 29, 1943 and filed with FCC December 2, 1943 showing that on Nov. 27, 1943, 200 shares Class B common stock were transferred from Robert C. Nordblum to Sanford H. Cohen for a consideration of $3,334.00 and that on Nov. 27, 1943, 100 shares Class B common stock were transferred from Robert C. Nordblum to George Cohen for $1,666.00.

Affidavit dated Nov. 15, 1943 filed with FCC Nov. 17, 1943 shows that on Nov. 9, 1943, 100 Shares Class B common stock were transferred from Robert C. Nordblum to George Cohen for a total consideration of $1,500.00.

Present ownership Class B, no par, voting:

Harold A. Lafount	400 shares
Sanford H. Cohen	400 shares
George Cohen	200 shares
TOTAL	1000 shares

BLEED THROUGH – P

[Filed—September 28, 1944]

593 **Applicant's Exhibit 5**

WORL

TEMPORARY CERTIFICATES—"CLASS B STOCK."

B-1 —August 6, 1936—Robert C. Nordblom	500	shares
B-2 —August 6, 1936—George A. Crockwell	200	"
B-3 —August 6, 1936—James K. Phelan	150	"
B-4 —August 6, 1936—William H. Eynon	150	"
	1000	"

B-5 —September 4, 1936—William H. Eynon	149	shares
B-6 —September 4, 1936—George L. White	1	"
Transferred from B-4		

B-7 —March 25, 1937—Harold A. Lafount	400	shares
B-8 —March 25, 1937—George A. Crockwell	200	"
B-9 —March 25, 1937—Robert C. Nordblom	300	"
B-10—March 25, 1937—Robert C. Nordblom	100	"
	1000	"

* * * * * *

NEW BOOK—"CLASS B STOCK."

B-1 —April 23, 1937—George A. Crockwell	100	shares
B-2 —April 23, 1937—George A. Crockwell	100	"
B-3 —April 23, 1937—Robert C. Nordblom	300	"
B-4 —April 23, 1937—Harold A. Lafount	400	"
B-5 —April 23, 1937—Robert C. Nordblom	100	"
	1000	"

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B-6—September 30, 1938—Sanford H. Cohen (from B-1)	100	shares
B-7 —September 30, 1938—Sanford H. Cohen (from B-2)	100	"
B-8 —Cancelled		
B-9 —Cancelled		
B-10—November 19, 1943—George Cohen (from B-5)	100	"
B-11—November 27, 1943—Sanford H. Cohen (from B-3)	200	"
B-12—November 27, 1943—George Cohen (from B-3)	100	"

NEW BOOK—"CLASS A STOCK."

A-1 —April 23, 1937—George A. Crockwell	90	shares
A-2 —April 23, 1937—George A. Crockwell	455	"
A-3 —April 23, 1937—George A. Crockwell	455	"
	1000	"
A-4 —June 29, 1938—Lester Endlar (from A-2)	100	"
A-5 —June 29, 1938—George A. Crockwell (from A-2)	355	"
A-6 —March 8, 1939—Harold A. Lafount (from A-1, A-3, A-5)	900	"
A-7 —March 31, 1941—Harold A. Lafount (from A-4)	100	"

* * * * * *

BLEED THROUGH – P

[Filed—September 28, 1944]

595 **Applicant's Exhibit 6**

114 State Street,
Boston, May 29, 1939.

Mr. Harold A. Lafount,
580 Fifth Avenue,
New York City, N. Y.

Dear Mr. Lafount:

On two attempts at seeing you at your New York office I failed on account of your absence from the city.

Joseph A. Hines, Esq., attorney for Natalie S. Whitwell, whom as you know is the owner of the Class A. stock of Broadcasting Service Organization, Inc., has taken definite steps toward recovering these stock certificates for her and to my knowledge has been to the United States Attorney's office and to the office of the Federal Bureau of Investigation, and also the Division of Inspection of these matters in the Boston Police Department. I know also that he is going to take it up with the Federal Communications Commission and apparently intends to leave no stone unturned to place Miss Whitwell in status quo.

If he succeeds in prevailing on any branch of the State or Federal Government to become interested in may result in the closing of Station WORL and may cause real embarrassment. I think it advisable for you to contact me or get in touch with Miss Whitwell's attorney before he "tears the cover off the ball". This attorney is a real fighter and is highly incensed at what has occurred.

Incidently besides being a lawyer he is a member of the State Legislature and not only does he know when and how to head in but has the personal contacts which will

OOR COPY

provide him with the necessary entree. I think it would be well not to let this get out in the open and suggest that you contact me immediately.

Yours truly,

s/ GEORGE A. CROCKWELL
(George A. Crockwell).

GAC/C

[Filed—September 28, 1944]

596 **Applicant's Exhibit 7**

June 15, 1939.

Mr. George A. Crockwell,
114 State Street,
Boston, Mass.

Dear Mr. Crockwell:

On my return to New York I found your letter of May 29th, 1939.

I am surprised at your statement concerning Natalie S. Whitwell. You certainly know that neither I nor anyone associated with me had any notice that the stock you referred to was owned by Miss Whitwell. You know that at all times you represented that the stock belonged to you and had been given as collateral to a note signed by you for a loan of money to you and that the stock in question was sold at public auction, after due notice to you.

Very truly yours,

s/ HAROLD A. LAFOUNT.

HAL:BP

BLEED THROUGH – F

[Filed—September 28, 1944]

597 **Applicant's Exhibit 8**

JOSEPH A. HINES
ATTORNEY AT LAW
73 Tremont Street
Boston

July 28th, 1941

Mr. Harold A. LaFount
580 Fifth Avenue
New York City, New York

Dear Sir:—

As Counsel for Miss Natalie S. Whitwell of the Hotel Victoria, Boston, Massachusetts, after a long and thorough investigation of all the facts surrounding the acquisition by you of all the outstanding stock of the Broadcasting Service Organization, Inc., operators of Station W O R L, I hereby demand of you in her behalf all the outstanding stock of the Broadcasting Service Organization, Inc. be turned over to Miss Natalie S. Whitwell.

Unless reply is received to this letter within ten days from date, appropriate legal proceedings will be instituted in her behalf.

Very truly yours,

(Signed) J. A. HINES

JAH:IP
Registered Mail
Return Receipt Requested.

POOR COPY

[Filed—September 28, 1944]

598 **Applicant's Exhibit 9**

BARKER, DAVISON & SHATTUCK
Counsellors-at-Law

Telephone Lafayette 3450

B. Devereux Barker
Robert H. Davison
Mayo A. Shattuck
Stuart MacMillan

Philip J. Woodward
Lewis L. Wadsworth, Jr.
Francis Hoague
James F. Farr

15 State Street
Boston

April 25, 1938

Mr. Harold A. Lafount
c/o Sanford Cohen, Esquire
580 Fifth Avenue
New York City

Dear Mr. Lafount:

I wonder if you have heard from Crockwell in response to your letter of April 15th. Crockwell also owes Nordblom a sizeable amount of money which has not been collected and we are going after him on this account. Whether such procedure will prejudice your chances of an adjustment I do not know and I am holding up any vigorous efforts against Crockwell on Nordblom's behalf until you have determined your procedure.

Very truly yours,

s/ R. H. DAVISON.

RHD:F

BLEED THROUGH

[Filed—September 27, 1944]

599 **Letter from Fisher and Wayland to Federal Communications Commission**

(Letterhead of Fisher and Wayland, Esqs.)

September 27, 1944

Mr. Thomas J. Slowie, Secretary
Federal Communications Commission
Washington, D. C.

In Re: Application Broadcasting
Service Organization, Inc.
Docket No. 6626

Dear Sir:

There are attached hereto Exhibits 10, 11 and 12 in the above entitled matter.

These exhibits are being presented for the record in this case in accordance with stipulation and understanding entered into at the time of the hearing between Commission counsel and counsel for applicant. They are to be filed in this proceedings as regular exhibits and to appear in the record thereof.

Very truly yours,

s/ Ben S. Fisher

Ben S. Fisher

BSF/C
encs.

- POOR COPY

[Filed—September 27, 1944.]

600 **Applicant's Exhibit 10**

BROADCASTING SERVICE ORGANIZATON,
INCORPORATED

SPECIAL MEETING OF STOCKHOLDERS IN LIEU OF THE ANNUAL MEETING

Boston, Mass., January 22, 1940

A special meeting of stockholders in lieu of the annual meeting of Broadcasting Service Organization, Incorporated was held this day at Room 70, 15 State Street, Boston, Massachusetts at 10:00 o'clock A. M., pursuant to the following notice duly mailed to all holders of record of the Class B stock:

BROADCASTING SERVICE ORGANIZATION, INC.

SPECIAL MEETING OF STOCKHOLDERS IN LIEU OF ANNUAL MEETING

Boston, Mass., January 13, 1940

A special meeting of the stockholders in lieu of the annual meeting of stockholders of Broadcasting Service Organization, Inc., will be held at Room 70, 15 State Street, Boston, Massachusetts, on Monday, January 22, 1940, at 10:00 o'clock A. M. for the following purposes:

1. To elect a Board of Directors.
2. To elect a Treasurer and a Clerk.
3. To ratify, confirm and approve all official acts of the officers and Board of Directors, all contracts made and business done by them during the year 1939.

BLEED THROUGH

601 4. For the transaction of such further business as may properly come before the meeting.

ROBERT H. DAVISON,
Clerk.

N.B. If you are unable to attend this meeting in person, please sign, date and return the enclosed proxy in the accompanying envelope.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

Boston, Mass., January 22, 1940

I hereby certify that I did on the 13th day of January, 1940, cause to be disposited in the postoffice, postage prepaid, directed to each Class B stockholder of record of Broadcasting Service Organization, Incorporated, at his last known address a notice of the annual meeting of Class B stockholders of said corporation, of which the foregoing is a true copy.

Attest: /S/ R. H. DAVISON,
Clerk.

Mr. Harold A. Lafount, the President, presided at the meeting.

There were present in person the following stockholders, representing the number of Class B shares set opposite their names, to wit:

Name	*No. of Class B Shares*	
Robert C. Nordblom	400	
Harold A. Lafount	400	800

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There was present by proxy to Harold A. Lafount, Sanford H. Cohen, being the owner of 200 shares of the Class B stock making a total of one thousand shares present in person or by proxy, or all of the Class B stock of the Company issued, outstanding and entitled to vote.

602 Mr. Robert H. Davison, the Clerk, was present and kept the minutes of the meeting.

The minutes of the previous meeting of stockholders were read and approved.

In the absence of the Treasurer, the President reported orally on the business of the company for the year 1939 and submitted a financial statement for the period from January 1, 1939 to July 15, 1939. The President stated the auditors had not completed their figures for the year 1939 and therefore no complete figures were available but that it was probable the results of the year's operations would show substantially no profit or loss and that therefore there were no moneys available for the payment of dividends on the Class A stock in accordance with the terms of that stock.

On motion duly made and seconded it was unanimously

VOTED: To proceed by ballot to the election of the Board of Directors.

Upon ballot, the following were elected Directors of the Company for the ensuing fiscal year.

Robert C. Nordblom
Harold A. Lafount
Robert H. Davison

On motion duly made and seconded it was unanimously

VOTED: To proceed by ballot to the election of a Treasurer.

Upon ballot, George Cohen was unanimously elected Treasurer of the company for the ensuing fiscal year.

BLEED THROUGH

On motion duly made and seconded it was unanimously

603 VOTED: To proceed by ballot to the election of a Clerk.

Upon ballot, Robert H. Davison was unanimously elected Clerk of the company for the ensuing fiscal year.

It appearing that there were not three stockholders pres- open for the inspection of any stockholder. On motion duly made and seconded it was unanimously

VOTED: To leave the selection of auditor to the Board of Directors.

It appeared that the records of the Board of Directors for the preceding year were in the hands of the Clerk and open for the inspection of any stockholders. On motion duly made and seconded it was unanimously

VOTED: To ratify, confirm and approve all official acts of the officers and Board of Directors, all contracts made and business done during the year 1939.

The general business of the company was discussed.

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously

VOTED: To adjourn.

A true record,

Attest: /S/ R. H. DAVISON
Clerk

POOR COPY

[Filed—September 27, 1944]

604 **Applicant's Exhibit 11**

BROADCASTING SERVICE ORGANIZATION, INCORPORATED

Special Meeting of Stockholders in Lieu of the Annual Meeting

Boston, Mass., March 18, 1941

A special meeting of stockholders in lieu of the annual meeting of Broadcasting Service Organization, Incorporated was held this day at Room 70, 15 State Street, Boston, Massachusetts at 3:00 o'clock P. M., pursuant to the following waiver of notice duly signed by all of the holders of record of the Class B stock:

Boston, Mass., March 18, 1941

We, the undersigned, being all of the holders of record of the Class B stock of Broadcasting Service Organization, Incorporated, hereby waive notice and agree that a meeting of stockholders in lieu of the annual meeting may be held this day at Room 70, 15 State Street, Boston, Massachusetts, at 3:00 o'clock P. M. for the transaction of such business as may properly come before the meeting.

/S/ Robert C. Nordblom /S/ Harold A. Lafount
/S/ Sanford H. Cohen

Mr. Harold A. Lafount, the President, presided at the meeting.

There were present in person the following stockholders, representing the number of Class B shares set opposite their names, to wit:

BLEED THROUGH – P

Name	*No. of Class B Shares*	
Robert C. Nordblom	400	
Harold A. Lafount	400	800

605 There were present by proxy to Harold A. Lafount, Sanford H. Cohen, being the owner of 200 shares of the Class B stock making a total of one thousand shares present in person or by proxy, or all of the Class B stock of the Company issued, outstanding and entitled to vote.

Mr. Robert H. Davison, the Clerk, was present and kept the minutes of the meeting.

The minutes of the previous meeting of stockholders were read and approved.

In the absence of the Treasurer, the President reported orally on the business of the Company for the year 1940 and submitted a balance sheet of the Company as of December 31, 1940.

On motion duly made and seconded it was unanimously

VOTED: To proceed by ballot to the election of a Board of Directors.

Upon ballot, the following were elected Directors of the Company for the ensuing fiscal year.

Harold A. Lafount
Robert H. Davison
Sanford H. Cohen

On motion duly made and seconded it was unanimously

VOTED: To proceed by ballot to the election of a Treasurer.

Upon ballot, George Cohen was unanimously elected Treasurer of the Company for the ensuing fiscal year.

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On motion duly made and seconded it was unanimously

VOTED: To waive the requirement that the Treasurer give bond.

On motion duly made and seconded it was unanimously

606 VOTED: To proceed by ballot to the election of a Clerk.

Upon ballot, Robert H. Davison was unanimously elected Clerk of the Company for the ensuing fiscal year.

It appearing that there were not three stockholders present who were not directors of the corporation, on motion duly made and seconded it was unanimously

VOTED: To leave the selection of auditor to the Board of Directors.

It appeared that the records of the Board of Directors for the preceding year were in the hands of the Clerk and open for the inspection of any stockholder. On motion duly made and seconded it was unanimously

VOTED: To ratify, confirm and approve all official acts of the officers and Board of Directors, all contracts made and business done during the year 1940.

The general business of the Company was discussed.

There being no further business to come before the meeting, on motion duly made and seconded it was unanimously

VOTED: To adjourn.

A true record,

Attest: /S/ R. H. DAVISON
Clerk

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[Filed—September 27, 1944.]

607 **Applicant's Exhibit 12**

BROADCASTING SERVICE ORGANIZATION, INCORPORATED

Special Meeting of Stockholders in Lieu of the Annual Meeting

Boston, Mass., March 18, 1942

A special meeting of stockholders in lieu of the annual meeting of Broadcasting Service Organization, Incorporated was held this day at 70, 15 State Street, Boston, Massachusetts at 10 o'clock A. M., pursuant to the following waiver of notice duly signed by all of the holders of record of the Class B stock:

Boston, Mass., March 18, 1942

We, the undersigned, being all of the holders of record of the Class B stock of Broadcasting Service Organization, Incorporated, hereby waive notice and agree that a meeting of stockholdlers in lieu of the annual meeting may be held this day at Room 70, 15 State Street, Boston, Massachusetts, at 10 o'clock A. M. for the transaction of such business as may properly come before the meeting.

/S/ Sanford H. Cohen /S/ Harold A. Lafount
/S/ Robert C. Nordblom

Mr. Harold A. Lafount, the President, presided at the meeting.

There were present in person the following stockholders, representing the number of Class B shares set opposite their names, to wit:

OOR COPY

Name	*No. of Class B. Shares*	
Robert C. Nordblom	400	
Harold A. Lafount	400	800

608 There was present by proxy to Harold A. Lafount, Sanford H. Cohen, being the owner of 200 shares of the class B stock making a total of one thousand shares present in person or by proxy, or all of the Class B stock of the Company issued, outstanding and entitled to vote.

Mr. Robert H. Davison, the Clerk, was present and kept the minutes of the meeting.

The minutes of the previous meeting of stockholders were read and approved.

In the absence of the Treasurer the President submitted a balance sheet and profit and loss statement of the Corporation for the year 1941, certified by Frederick Greenfield, certified public accountant.

On motion duly made and seconded it was unanimously

VOTED: To proceed by ballot to the election of a Board of Directors.

Upon ballot, the following were elected Directors of the Company for the ensuing fiscal year.

Harold A. Lafount
Robert H. Davison
Sanford H. Cohen

On motion duly made and seconded it was unanimously

VOTED: To proceed by ballot to the election of a Treasurer.

Upon ballot, George Cohen was unanimously elected Treasurer of the Company for the ensuing fiscal year.

BLEED THROUGH – PO

On motion duly made and seconded it was unanimously

VOTED: To waive the requirement that the Treasurer give bond.

609 It appearing to the meeting that at the special meeting of stockholders in lieu of the annual meeting there were not three stockholders present who were not directors, it had been voted to leave the selection of an auditor to the Board of Directors. On motion duly made and seconded it was unanimously

VOTED: To select Frederick Greenfield to act as auditor for the Company for the ensuing fiscal year pursuant to Section 49 of Chapter 156 of the General Laws.

The general business of the Company was discussed.

There being no further business to come before the meeting, on motion duly made and seconded it was unanimously

VOTED: To adjourn.

A true record,

Attest: /S/ R. H. DAVISON
Clerk

OR COPY

[Filed—September 28, 1944.]

610 **Applicant's Exhibit 13**

WORL

PUBLIC SERVICE

National and Civic

American Red Cross
American Legion
Laymen's National Committee
City of Boston
Boston Health Department
City of Boston Police Department
Boston Park Department
Boston Tuberculosis Department
Boston School for Crippled Children
Boys Club of America
Boy Scouts of America
Bundles for America
Carnegie Endowment for International Peace
Carney Hospital
United China Relief
Christmas Basket Fund
Disabled War Veterans
Christmas Mail
Christmas Seals
Civil Air Patrol
Netherlands Information Bureau
Massachusetts State College
Salvation Army
Childrens Federation Santa Claus Party
Seventh Column
Veterans of Foreign Wars
United Nations Association
United Negro College Fund

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Middle America Information Bureau
City of Boston Fire Department
Governor's Council Wartime Recreation
Greek War Relief
American Medical Association
Hospital Council of Boston
Massachusetts Hospital Association
Internal Revenue Department
Thomas Jefferson Bicentennial Commission
Kiddie Kamp Corporation
Massachusetts Committee for Infantile Paralysis
Massachusetts Committee on Public Safety
Massachusetts Department of Public Welfare
Mass. Council American-Soviet Friendship
Massachusetts Women's Defense Corps
Mass. Society for the Prevention of Cruelty to Animals
Massachusetts State Guard
Medfiled Hillside Church
611 War Activities Comm. of the Motion Picture Industry
National Assoc. for the Advancement of Colored People
National Foundation for Infantile Paralysis
National Hospital Day
National Safety Council
Palestine Pioneer Committee
Russian War Relief
Boston Public Works Committee
Seamen's Friend Society
United Service Organization
Greater Boston United War Fund
Variety Club Camp Fund
Volunteer Service Bureau
Waste Fat Saving Committee
President's Birthday Party Committee
Beacon Auxiliary
Institute for Democratic Education
Cambridge Industrial Exhibition Comm.

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Wartime Health Week
Institute of Oral and Visual Education
Trinity Church
Jewish War Veterans of U. S.
Boston Speech School for Crippled Children
Firestone War Exhibit
Caravan Society, Inc.
Boston University
Beth Israel Hospital
Boston Public Library

612 PUBLIC SERVICE

U. S. Government

American Field Service
Army Emergency Relief
Boston Port of Embarkation
Office of Civilian Defense
U. S. Coast Guard
War Loan Drives
Federal Bureau of Investigation
U. S. Flag Association (Flag Week)
Navy Recruiting (Waves)
Office of Price Administration
Office of War Information
U. S. Navy
U. S. Nursing Corps
U. S. Treasury Department
War Bond Information Center
War Manpower Commission
War Production Board
U. S. Government Weather Reports
Women's Army Corps
U. S. Army (First Service Command)
U. S. Department of Agriculture
U. S. Marine Corps
U. S. Maritime Service

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[Filed—September 28, 1944.]

613 **Applicant's Exhibit 14**

1938		
Week Ending—	May 21	$ 904.05
	June 18	877.27
	July 23	1051.05
	August 20	1149.09
	Sept. 24	967.22
	October 22	1403.64
	November 26	1223.43
	December 24	831.91
1939	January 21	1099.01
	February 18	1322.47
	March 18	1746.45
	April 22	1637.66
	May 20	1613.08
	June 24	1417.67
	July 22	1161.91
	August 19	1628.18
	September 23	2086.80
	October 21	2005.27
	November 18	2239.15
	December 23	2186.91
1940	January 20	2432.98
	February 24	2661.43
	March 23	2888.15
	April 20	3345.34
	May 18	3315.65
	June 22	3802.14
	July 19	3671.04
	August 24	3133.33
	September 21	3634.30
	October 19	3306.82
	November 23	3009.48
	December 21	3167.74

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	1941	January 18	2732.30
		February 22	2812.73
		March 22	2970.73
		April 19	3296.39
		May 24	4130.50
		June 22	3808.21
		July 19	3373.97
		August 23	3308.21
		September 20	3379.10
		October 18	4073.48
		November 22	4054.25
		December 20	4161.84
614	1942		
	Week Ending—	January 24	3474.82
		February 21	3212.60
		March 21	3357.22
		April 18	3613.56
		May 23	3633.64
		June 20	3606.86
		July 18	3050.53
		August 22	3485.23
		September 19	3648.18
		October 24	4368.31
		November 21	4338.81
		December 19	3654.12
	1943	January 23	3554.68
		February 20	3797.60
		March 20	3863.42
		April 17	4276.55
		May 22	4849.26
		June 19	3834.84
		July 17	3300.72
		August 21	4170.97
		September 18	4088.35
		October 23	5190.72
		November 13	6055.22
		December 18	5920.82

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1944	January 22	4991.55
	February 19	5631.55
	March 25	5047.25
	April 22	5472.75
	May 20	5857.25
	June 17	5546.75
	July 15	5857.13
	August	6261.
	September	6016.

[Filed—September 28, 1944]

615 **Appellant's Exhibit 15**

1944 Accounts

Dentyne Chewing Gum
American Express
Cape Cod Steamship Company
Clearweave Hosiery Stores
Super Suds
Palmolive Soap
Corinthia Lipstick
Saturday Evening Post
I. J. Fox
W. T. Grant Five & Ten Stores
Hennafoam Shampoo
Hood Rubber Company
Richard Hudnut Cosmetics
John Irving Shoe Company
Kay Jewelry Company
Moxie Beverage Company
National Shawmut Bank
Ruppert's Beer
P. A. Starck Piano Company—Chicago
True Story Magazine

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Ward Baking Company Tip-top Bread
Wrigleys Chewing Gum
Lifebuoy Soap
Royal Crown Cola
Filene's Department Store
Jordan Marsh Department Store
Cocoa-Marsh Chocolate Milk Drink
Rinso
G. Washington Coffee Company
Boston & Maine Rail Road
Raytheon Manufacturing Company
Economy Grocery Chain
R.K.O. Theatres
American School
Capitol Home Construction Company
Adam Hats
Suffolk Farms
Educator Crax
Liptons Noodle Soup
Vims
Republic Pictures
Spur
Canada Dry Gingerale
American Chicle Company

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[Filed—September 28, 1944.]

616 **Applicant's Exhibit 16**

HOOPER RADIO REPORT

WORL Percentage of Listeners

	Morning	*Afternoon*
1941, October	8.4%	9.4%
1942, October	12.3%	10.0%
1943, October	14.2%	12.3%

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[Filed—September 28, 1944.]

625-626 **Commission's Exhibit 2**

(Photostats)

(See opposite) ☞

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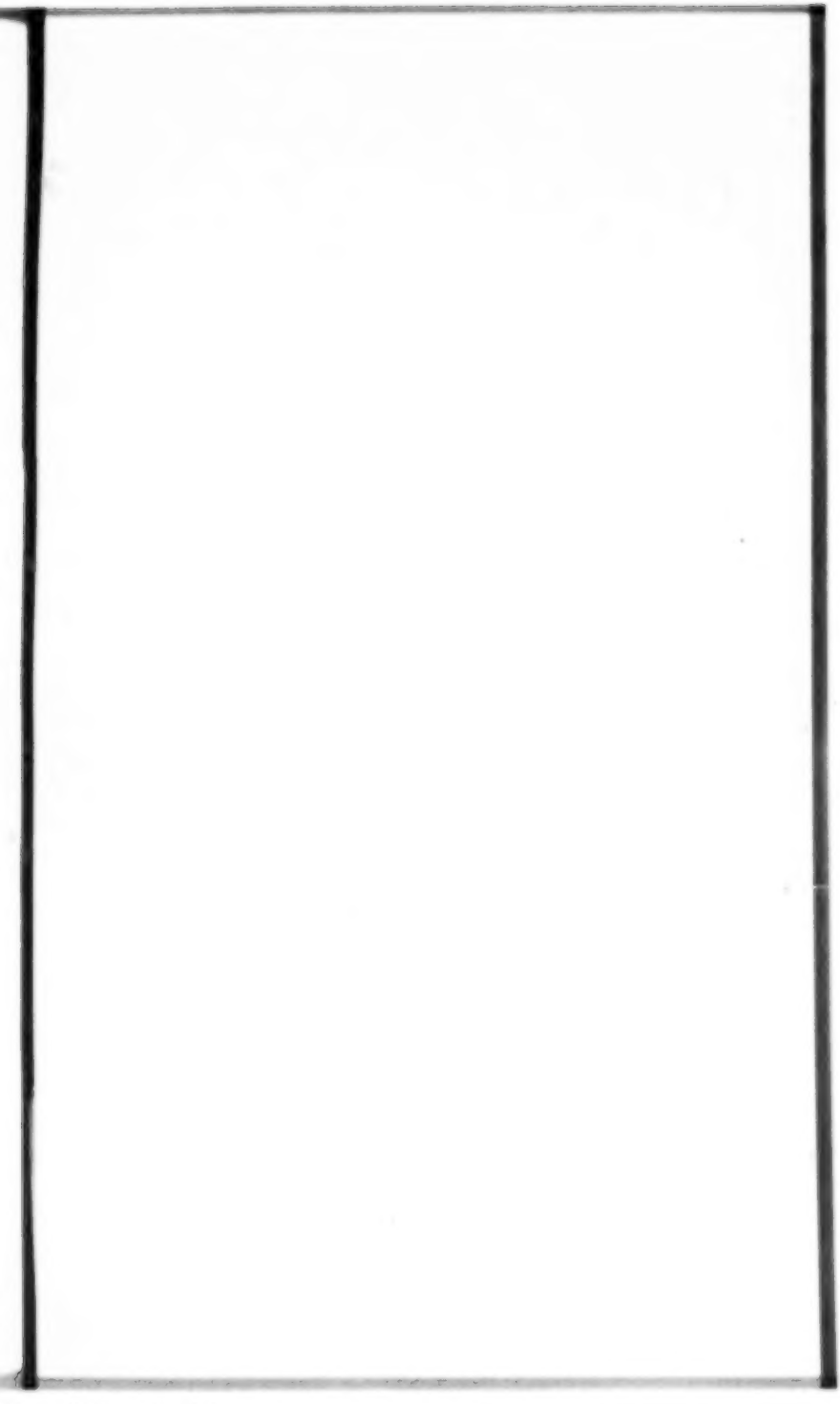

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Memorandum of Agreement made this sixteenth day of March, 1957 between George A. Crockwell, Robert C. Nordblom, James K. Phelan and William H. Eymon.

WHEREAS George A. Crockwell is the owner of 500 shares of Class B and 400 shares of Class A stock of Broadcasting Service Organization, Inc.; Robert C. Nordblom is the owner of 500 shares of Class B stock of said corporation; James K. Phelan is the owner of 100 shares of Class B and 300 shares of Class A stock of said corporation; and William H. Eymon is the owner of 100 shares of Class B and 300 shares of Class A stock of said corporation, and

WHEREAS George A. Crockwell and Robert C. Nordblom are about to enter into a contract with Harold A. Lafount for the sale of 700 shares of said Class B stock for the sum of $40,000 and George A. Crockwell and Robert C. Nordblom agree to discharge from their personal all of the debts of Broadcasting Service Organization, Inc. except certain lease and other contract obligations as specified in the agreement with Lafount.

NOW, THEREFORE, it is agreed as follows:

1. William H. Eymon agrees to deliver to George A. Crockwell duly endorsed for transfer 100 shares of Class B and 300 shares of Class A stock of Broadcasting Service Organization, Inc.; to cancel forthwith the employment contract now in effect between himself and Broadcasting Service Organization, Inc.; and to resign forthwith as Director and Vice-President of Broadcasting Service Organization, Inc., in consideration of the payment to him from the proceeds of the sale to Harold A. Lafount herein referred to of the sum of $2500.00.

2. James K. Phelan agrees to deliver to George A. Crockwell duly endorsed for transfer 100 shares of Class B and 300 shares of Class A stock of Broadcasting Service Organization, Inc.; to cancel forthwith the employment contract now in effect between himself and Broadcasting Service Organization, Inc.; and to resign forthwith as Director and Vice-President of Broadcasting Service Organization, Inc., in consideration of the payment to him from the proceeds of the sale to Harold A. Lafount herein referred to of the sum of $2500.00

3. George A. Crockwell agrees to procure for said William H. Eymon and James K. Phelan a release of all liability on their part to himself to the Mercantile Trust Company and/or Estelle Whitwell.

4. George A. Crockwell agrees with Robert C. Nordblom that the proceeds of the sale of stock to said Harold A. Lafount after payment of the debts of Broadcasting Service Organization, Inc. and after the payment of $2500 cash to William H. Eymon and James K. Phelan, as stated in Paragraphs 1 and 2 above, shall be divided 37.5% to Robert C. Nordblom and 62.5% to George A. Crockwell; providing, however, that if the debts of the Broadcasting Service Organiza-

COMMISSION'S EXHIBIT

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tion, Inc. including the cost of procuring the necessary amendment to the lease with the Myles Standish Company under the terms of the agreement between George A. Crockwell and Robert C. Nordblom and Harold A. LaFount, exceeds $38,000, then in such event Robert C. Nordblom agrees to assume the excess up to $1500.00. George A. Crockwell further agrees to cancel forthwith the employment contract now in effect between himself and Broadcasting Service Organization, Inc. and to resign forthwith as Director and Treasurer of Broadcasting Service Organization, Inc.

5. If the proposed agreement between George A. Crockwell, Robert C. Nordblom and Harold A. LaFount is not entered into on or before March 9th, 1937 then this agreement shall be void and of no effect.

In Witness Whereof the parties have signed this memorandum the day and year first above written.

George A. Crockwell.

Robert C. Nordblom

Harold A. LaFount

William H. Eginton

I acknowledge payment to me of the sum of $250 and full satisfaction of the within agreement.

Harold A. LaFount

I acknowledge payment to me of the sum of $250 and full satisfaction of the within agreement.

William H. Eginton

COMMISSION'S EXHIBIT 2

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[Filed—September 28, 1944.]

627 **Commission's Exhibit 3**

Memorandum of Agreement made this sixteenth day of March, 1937 between Harold A. Lafount and George A. Crockwell and Robert C. Nordblom.

WHEREAS Broadcasting Service Organization, Inc. has an authorized and outstanding capital (1) of 1,000 shares of Class A stock without par value, entitled to annual cumulative preferential dividends at the rate of Five Dollars ($5.00) per share, and to the payment of One hundred Dollars ($100.) per share on liquidation, and (2) of 1,000 shares of Class B stock without par value, and

WHEREAS George A. Crockwell is the owner of all of the outstanding Class A stock and 300 shares of Class B stock and Robert C. Nordblom is the owner of 400 shares of Class B stock;

NOW, THEREFORE, it is agreed as follows:

1. Said George A. Crockwell and Robert C. Nordblom, being the owners of more than two-thirds of the outstanding voting stock agree to cause Broadcasting Service Organization, Inc. to alter its capital so that the Class A stock will be entitled to dividends at the rate of Two Dollars and twenty cents ($2.20) per share if earned in any year by the Corporation but not otherwise, said dividend to be cumulative only if earned, said Class A stock to be entitled on liquidation to Forty-four Dollars ($44.00) per share in preference to the Class B stock and provided that after payment of dividends on the Class A stock at the rate of Two Dollars and twenty cents ($2.20) per share and after the payment of dividends on the Class B stock at the rate of Six Dollars ($6.00) per share, 50% of the remaining net earnings in any year shall be applied to the purchase and retirement of the Class A stock, all other

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rights and qualifications of said Class A stock to remain unaltered.

2. Said Crockwell and Nordblom agree to transfer to said Lafount 400 shares of the Class B stock of the corporation in consideration of the payment to them of Forty-eight thousand Dollars ($48,000) in cash, said Crockwell obligating himself to deliver 300 of said Class B stock and said Nordblom 100 of said shares. Said Crockwell and Nordblom further agree as a part of the consideration hereof to pay or cause to be paid all of the debts and obligations of the corporation existing as of the close of business March 25, 1937, except only (a) its contract with American Society of Composers, Authors and Publishers, so-called, (b) its contract with the European Society of Authors, Composers and Musicians, (c) its lease from Babson Statistical Organization covering premises in Needham, Massachusetts occupied as a transmitting station, (d) its lease from Myles Standish Company covering premises in the Myles Standish, 30 Bay State Road, Boston, Massachusetts used as a studio, which lease, however, shall be for a period of one year from March 25, 1937 and the rent for which period shall be prepaid. Said Crockwell and Nordblom further agree to enter into mutually satisfactory arrangements with Lafount whereby a sufficient part of said Forty-eight thousand Dollars ($48,000) will be set aside to insure the payment of all debts and obligations of Broadcasting Service Organization, Inc. except as excepted above.

3. The consideration named herein will be paid and the stock delivered on March 25, 1937, subject to performance of the agreements contained in paragraph 1 of this memorandum.

In Witness Whereof the parties hereto have signed this agreement the day and year first above written.

Harold A. Lafount
George A. Crockwell
Robert C. Nordblom

COPY

[Filed—September 28, 1944.]

629 **Commission's Exhibit 4**

MINUTE BOOK OF BROADCASTING SERVICE ORGANIZATION, INCORPORATED

SPECIAL MEETING OF THE STOCKHOLDERS

Boston, Mass., March 19, 1937.

There were present in person the following stockholders representing the number of shares set opposite their names, to wit:

Name of Stockholder	*No. of Shares* *Class A*	*Class B*
George A. Crockwell.....	400	200
James K. Phelan.....	300	150
William H. Eynon.....	300	149
George L. White.....		1
Robert C. Nordblom.....		500
	1,000	1,000

It thus appeared that the holders of record of all the capital stock issued and outstanding were present and participated in the meeting, including that of the Class A stock although this class of stock is not entitled to vote. Mr. Davison, the Clerk, was also present.

Mr. Robert C. Nordblom, the President, presided at the meeting.

* * * * * *

On motion duly made and seconded, it was

VOTED: by a vote of all of the shares of Class A and 999 shares of Class B outstanding, to amend the rights, prefer-

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ences, privileges and restrictions of the Class A stock so that they shall be as follows:

1. The Class A stock shall be entitled in preference to the Class B stock to dividends at the rate of Two Dollars and twenty cents ($2.20) per share per annum, payable annually on the first day of February in each year. Dividends on the Class A stock shall be cumulative as follows and not otherwise:

(a) if there be no net profits of a fiscal year, no dividend on the Class A stock shall accumulate in respect of such year;

(b) if there shall be net profits of a fiscal year (net
630 profits to be determined in accordance with standard accounting practices) during which any shares of Class A stock shall have been outstanding, a dividend for such fiscal year shall accumulate in an amount determined by the application of the following formula: ascertain the amount per share which would have been distributable upon such shares of Class A stock outstanding if all of the net profits up to an amount not exceeding Two Dollars and twenty cents ($2.20) per share per annum had been declared and paid or set apart for payment, and deduct therefrom the amount, if any, actually declared and paid, or set apart for payment as a dividend on the shares of Class A stock so outstanding for such fiscal year.

2. On or before March 1st in each year, beginning with March 1, 1938, as long as any of the Class A stock shall be outstanding, there shall be set aside as a sinking fund for the purchase and retirement of the Class A stock a sum equivalent to fifty percentum (50%) of the residue of the net profits (as determined in accordance with standard accounting practices) of the Company for the fiscal year next preceding, remaining after deducting (a) a sum equal to dividends at the rate of Two Dollars and twenty cents

COPY

($2.20) per share on all the shares of Class A stock outstanding during such fiscal year; and (b) a sum equal to dividends at the rate of Six Dollars ($6.00) per share on all the shares of Class B stock outstanding during such fiscal year.

3. All amounts set apart for the sinking fund shall be applied by the Company to the purchase in the open market or at public or private sale of outstanding Class A stock at a price or prices not exceeding Forty-four Dollars ($44.00) per share.

4. In case on March 25th in any year there shall remain unexpended in the sinking fund One thousand Dollars ($1,000) or more, the Company shall on July 1st of that year apply all sums in the sinking fund in so far as possible to the redemption of outstanding Class A stock in accordance with the provisions for redemption hereinafter contained.

631 5. In the event of the liquidation or dissolution of the Company, whether voluntary or involuntary, the holders of the Class A stock shall be entitled to be paid out of the assets of the Company before any distribution is made to the holders of the Class B stock, the sum of Forty-four Dollars ($44.00) per share together with (a) dividends accumulated as aforesaid to the beginning of the then current fiscal year; and (b) a sum equal to interest at the rate of Two Dollars and twenty cents ($2.20) per annum per share from the beginning of the fiscal year to the date of liquidation or dissolution, less any amount which shall have been paid as dividends for the current fiscal year.

6. The Class A stock may be redeemed in whole or in part at the option of the Company by vote of the Board of Directors at Forty-four Dollars ($44.00) per share and (a) dividends accumulated as aforesaid to the beginning of

BLEED THROUGH – POOR

the then current fiscal year and (b) a sum equal to interest at the rate of Two Dollars and twenty cents ($2.20) per annum per share from the beginning of the fiscal year to the date of redemption less any amount which shall have been paid as dividends for the current fiscal year. If less than all the Class A shares outstanding are to be redeemed, the shares to be redeemed shall be selected by lot in such manner as the Board of Directors shall prescribe. At least twenty days prior to the date fixed for redemption, a written notice shall be mailed to each holder of record of the Class A stock to be redeemed addressed to such holder at his address as it appears on the records of the Company, notifying such holder of the redemption of his shares and the date fixed for such redemption. On or before the date fixed in such notice for redemption, each holder of the shares of Class A stock which are to be redeemed shall surrender his certificates for such shares to the Company. The redemption price shall then be paid to or on the order of the person whose name appears on the records of the Company as the holder thereof and each surrendered certificate shall be cancelled. In case less than all the shares
632 represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after the date fixed for redemption (unless default shall be made by the Company in payment of the redemption price) all rights of the holders of shares of Class A stock called for redemption except the right to receive the redemption price without interest shall cease and determine. At any time after the giving of any notice of redemption the Company may deposit the redemption price with a bank or trust company in the City of Boston, Massachusetts, as a trust fund for the holders of such shares. From and after the making of such deposit the shares of Class A stock designated for redemption shall be deemed to be no longer outstanding for any purpose, and the holders thereof shall cease to be stockholders with respect to such shares, their

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rights being limited to the sole right to receive from such depositary the redemption price of such shares, without interest, on and after the date designated for payment thereof. Any moneys unclaimed at the end of six years from the date of any such deposit shall be repaid to the corporation.

The holders of the Class A stock shall have no vote, except that the Company shall not create any stock having rights prior to the Class A stock, nor shall any securities convertible into Class A stock or any other stock having rights prior to Class A stock be issued, without the affirmative vote or written consent of the holders of record of at least a majority of the Class A stock. Except as above provided the holders of Class B stock shall have sole voting powers on the basis of one vote for each share of Class B stock held by them.

* * * * * *

A true record,

Attest: R. H. Davison
Clerk

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[Filed—September 28, 1944.]

633 **Commission's Exhibit 4a**

Stock ownership of Station WORL as shown by Commission Files.

PRIOR TO MARCH 25, 1937

A stock		*B stock*	
George A. Crockwell...	400	Robert C. Nordblom....	500
James K. Phelan.....	300	George A. Crockwell...	200
William H. Eynon.....	300	James K. Phelan.....	150
		William H. Eynon.....	150

MARCH 25, 1937, REPORTED MARCH 31, 1937

A stock		*B stock*	
George A. Crockwell...1000		Harold A. Lafount.....	400
		Robert C. Nordblom...	400
		George A. Crockwell...	200

JUNE 29, 1938, REPORTED JULY 11, 1938

A stock		*B stock*	
George A. Crockwell..	900	Harold A. Lafount....	400
Lester Endlar	100	Robert C. Nordblom...	400
		George A. Crockwell...	200

SEPTEMBER 30, 1938, REPORTED NOVEMBER 22, 1938

A stock		*B stock*	
George A. Crockwell...	900	Harold A. Lafount....	400
Lester Endlar	100	Robert C. Nordblom...	400
		Sanford H. Cohen.....	200

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MARCH 8, 1939, REPORTED APRIL 15, 1940

A stock		*B stock*	
Lester Endlar	100	Harold A. Lafount....	400
Harold A. Lafount.....	900	Robert C. Nordblom...	400
		Sanford H. Cohen.....	200

634 MARCH 31, 1941, REPORTED APRIL 30, 1941

A stock		*B stock*	
Harold A. Lafount...	1000	Harold A. Lafount....	400
		Robert C. Nordblom...	400
		Sanford H. Cohen.....	200

NOVEMBER 9, 1943, REPORTED NOVEMBER 17, 1943

A stock		*B stock*	
Harold A. Lafount....	1000	Harold A. Lafount....	400
		Robert C. Nordblom...	300
		Sanford H. Cohen.....	200
		George Cohen	100

NOVEMBER 27, 1943, REPORTED DECEMBER 1, 1943

A stock		*B stock*	
Harold A. Lafount....	1000	Harold A. Lafount....	400
		Sanford H. Cohen....	400
		George Cohen	200

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[Filed—September 28, 1944.]

635 **Commission's Exhibit 5**

THIS ESCROW AGREEMENT made and entered into this 25th day of March, 1937 by and between George A. Crockwell, Robert C. Nordblom, Harold A. Lafount and R. H. Davison, as escrow agent.

WHEREAS, Crockwell and Nordblom have sold 400 shares of Class B stock of the Broadcasting Service Organization, Inc., a Massachusetts Corporation, to Harold A. Lafount for the sum of Forty-eight thousand Dollars ($48,000.) and,

WHEREAS, the said consideration is in payment of the said stock and also in payment of all of the indebtedness against the Broadcasting Service Organization, Inc. and,

WHEREAS, the parties hereto are desirous of having all of the indebtedness immediately paid off in full.

NOW THEREFORE WITNESSETH that in consideration of the sums hereinafter mentioned and of the stipulations and terms herein contained, all of the parties hereto agree that the said sum of Forty-eight thousand Dollars ($48,000.) shall be placed in escrow with the legal firm of Barker, Davison & Shattack with R. H. Davison as the escrow agent of Boston, Massachusetts to be used for the following purposes: To immediately pay all of the indebtedness and obligations of the said Broadcasting Service Organization, Inc. existing as of the close of business on March 25, 1937, except only (a) its contract with American Society of Composers, Authors and Publishers, so-called; (b) its contract with the European Society of Authors, Composers and Musicians; (c) its lease from Babson Statistical Organization covering the premises in Needham, Massachusetts

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occupied as a transmitting station; (d) its lease from Myles Standish Company covering premises in the Myles Standish, 30 Bay State Road, Boston, Massachusetts, used as a studio, which lease, however, shall be for a period of one year from March 25, 1937 and the rent for which period shall be prepaid by the first party.

It is mutually agreed and understood that the said escrow agent, R. H. Davison, will use the said funds for the purposes herein specified and upon the payment of all of
636 the said indebtedness and upon the assurance of an auditing firm, after a proper audit of the accounts of the Broadcasting Service Organization, Inc., that all of the indebtedness of the said corporation has been paid or that he retains sufficient moneys to pay such indebtedness then and in that event, the remainder of the said sum in the hands of the escrow agent shall be distributed as follows: 62½ percent to George A. Crockwell and 37½ percent to Robert C. Nordblom.

It is further agreed between the parties hereto that the escrow agent shall pay all taxes legally assessed or any penalties whether federal, state, county, city or of any other character and that the said Broadcasting Service Organization, Inc. has made all necessary tax and corporate returns and reports either federal or state or local and will continue to make all necessary reports and returns and pay all taxes of any nature, whatsoever levied or owing upon said property or properties of the said corporation including the 1936 income taxes in full and the 1936 personal property taxes and any and all other taxes due and owing up to and including the date of March 25, 1937 and in event of any sums being due and owing as a result thereof, the said escrow agent will pay the same from the funds herein referred to.

It is further agreed that in event there are any liens, encumbrances, taxes or indebtedness of any character due and owing against the said Broadcasting Service Organiza-

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tion, Inc. at the time this agreement is consummated that the escrow agent hereinbefore specified shall pay the same and deduct the amount from the sums hereinbefore specified and it is understood and agreed that the escrow agent will retain in his hands at all times a sufficient amount to properly pay any and all indebtedness and to protect the purchaser, Harold A. Lafount.

It is further agreed by the parties hereto that the said 400 shares of capital stock Class B of the Broadcasting Service Organization, Inc. has been assigned in blank and placed in escrow with Barker, Davison & Shattack of Boston, Massachusetts and the resignation of all of the present officers and directors of the said corporation
637 has been placed in escrow and new officers and directors have been elected in accordance with the by-laws as amended of the Broadcasting Service Organization, Inc.

In Witness Whereof, the parties hereto have signed this agreement the day and year first above-written.

George A. Crockwell

Harold A. Lafount

Robert C. Nordblom

Robert H. Davison

COPY

[Filed—September 28, 1944]

638 **Commission's Exhibit 6**

AGREEMENT

THIS AGREEMENT made this 25th day of March, 1937 between BEN S. FISHER, as agent, of Washington, D. C., and ROBERT C. NORDBLOM of Boston, Massachusetts.

WITNESSETH, that

The said Ben S. Fisher agrees to buy from the said Robert C. Nordblom three hundred (300) shares of the Class B stock of Broadcasting Service Organization, Incorporated, a Massachusetts corporation, and to pay therefore the sum of Four thousand five hundred Dollars ($4,500).

Said Robert C. Nordblom agrees in consideration of the payment to him of Four thousand five hundred Dollars ($4,500) to assign and transfer to said Ben S. Fisher three hundred (300) shares of said Class B stock.

The consideration named herein will be paid and the stock delivered on March 25, 1937.

IN WITNESS WHEREOF, the parties hereto have signed this agreement the day and year above written.

(signed) BEN S. FISHER

[Filed—September 28, 1944.]

639-640 **Commission's Exhibit 7**

(Photostats)

(See opposite) ☞

BLEED THROUGH – POOR

OPY

BROADCASTING SERVICE ORGANIZATION, INCORPORATED

CLASS B STOCK

Certificate No. B3

For [illegible] Shares

Issued to

[illegible]

[illegible] Street

Newton, Mass.

Dated Dec. 29 1927

From whom Transferred

Dated 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred

Received Certificate No. [illegible]

For [illegible] Shares

this [illegible] day of [illegible] 19[illegible]

Robert C. Maddox

COMMISSION'S EXHIBIT 7

No. B3 ...300... Shares

Incorporated under the laws of the Commonwealth of Massachusetts

BROADCASTING SERVICE ORGANIZATION, INCORPORATED

CLASS B STOCK, NO PAR VALUE

THIS CERTIFIES that ROBERT C. NORDLINGER

is the owner of Three hundred shares, fully paid and non-assessable of the CLASS B STOCK of

BROADCASTING SERVICE ORGANIZATION, INCORPORATED

transferable on the books of the corporation by the holder hereof in person or by attorney on surrender of this certificate properly endorsed. The capital stock is divided into Class A shares without par value and Class B shares without par value. A statement of the rights, preferences, voting powers, restrictions and qualifications of the Class A and Class B stock contained in the Agreement of Association and Articles of Organization and amendments thereto is set forth on the back hereof, to all of which the holder hereof assents by accepting this certificate.

IN WITNESS WHEREOF the corporation has caused this certificate to be signed by its proper officers and its seal to be affixed this 23rd day of April, 1937.

BROADCASTING SERVICE ORGANIZATION, INCORPORATED

By _____ President

By Helen Rose Treasurer

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Description of Respective Rights of Class A and Class B Stock

The Class A stock shall be entitled in preference to the Class B stock to dividends at the rate of Two Dollars and twenty cents ($2.20) per share per annum, payable annually on the first day of February in each year. Dividends on the Class A stock shall be cumulative as follows and not otherwise: [illegible] there be no net profits of a fiscal year, no dividend on the Class A stock shall accumulate in respect of such year; if the profits shall be net profits of a fiscal year (net profits to be determined in accordance with standard accounting practice) during which any shares of Class A stock shall [illegible] in an amount determined by the application of the following formula: ascertain the amount per share which would have been distributable upon such shares of Class A stock outstanding if all of the net profits up to an amount sufficient [illegible] Two Dollars and twenty cents ($2.20) per share for such years had been declared and paid or set apart for payment, less [illegible] thereof the amount, if any, actually distributed, paid, or set apart for payment as a dividend with the shares of Class A stock so outstanding for such fiscal year.

On or before March 1st in each year, beginning with March 1, 1926, as long as any of the Class A stock shall be outstanding, there shall be set aside as a sinking fund for the purchase and retirement of the Class A stock a sum equivalent to fifty per centum (50%) of the residue of the net profits (as determined in accordance with standard accounting practice) of the Company for the fiscal year next preceding, remaining after deducting (a) a sum equal to dividends at the rate of Two Dollars and twenty cents ($2.20) per share on all the shares of Class A stock outstanding during such fiscal year; and (b) a sum equal to dividends at the rate of Six Dollars ($6.00) per share on all the shares of Class B stock outstanding during such fiscal year.

All amounts set apart for the sinking fund shall be applied by the Company to the purchase in the open market or at public or private sale of outstanding Class A stock at a price or prices not exceeding Forty-four Dollars ($44.00) per share.

In case on March 31th in any year there shall remain unexpended in the sinking fund One thousand Dollars ($1,000) or more, the Company shall on July 1st of that year apply all such in the sinking fund in so far as possible to the redemption of outstanding Class A stock in accordance with the provisions for redemption hereinafter contained.

In the event of the liquidation or dissolution of the Company, whether voluntary or involuntary, the holders of the Class A stock shall be entitled to be paid out of the assets of the Company before any distribution is made to the holders of the Class B stock, the sum of Forty-four Dollars ($44.00) per share together with (a) dividends accumulated as aforesaid to the beginning of the then current fiscal year; and (b) a sum equal to interest at the rate of Two Dollars and twenty cents ($2.20) per annum per share from the beginning of the fiscal year to the date of liquidation or dissolution, less any amount which shall have been paid as dividends for the current fiscal year.

The Class A stock may be redeemed in whole or [illegible] at the option of the Company by vote of the Board of Directors at Forty-four Dollars ($44.00) per share and (a) dividends accumulated as aforesaid to the beginning of the then current fiscal year and (b) a sum equal to interest at the rate of Two Dollars and twenty cents ($2.20) per annum per share from the beginning of the fiscal year to the date of redemption, less any amount which shall have been paid as dividends for the current fiscal year. If less than all the Class A stock outstanding are to be redeemed, the shares to be redeemed shall be selected by lot in such manner as the Board of Directors shall prescribe. At least twenty days prior to the date fixed for redemption, a written notice shall be mailed to each holder of record of the Class A stock to be redeemed, addressed to such holder at his address as it appears on the records of the Company, notifying such holder of the redemption of his shares and the date fixed for such redemption. On or before the date fixed for such redemption, each holder of the shares of Class A stock to be redeemed shall surrender his certificates for such shares to the Company. The redemption price shall then be paid to or on the order of the person whose name appears on the records of the Company as the holder thereof and the surrendered certificate shall be cancelled. In case [illegible] all the shares represented by such certificate are redeemed a new certificate shall be issued representing the unredeemed shares. From and after the date fixed for redemption (unless default shall be made by the Company in payment of the redemption price) all rights of the holders of shares of Class A stock called for redemption except the right to receive the redemption price without interest shall cease and determine. At any time after the giving of any notice of redemption, the Company may deposit the redemption price with a bank or trust company in the City of Boston, Massachusetts, as a trust fund for the holders of such shares. From and after the making of such deposit the shares of Class A stock designated for redemption shall be deemed to be no longer outstanding for any purpose, and the holders thereof shall cease to be stockholders with respect to such shares, their rights being limited to the sole right to receive from such depositary the redemption price of such shares, without interest, on and after the date designated for payment thereof. Any moneys unclaimed at the end of six years from the date of any such deposit shall be repaid to the corporation.

The holders of the Class A stock shall have no vote, except that the Company shall not create any stock having rights prior to the Class A stock, nor shall any securities convertible into Class A stock or any other stock having rights prior to Class A stock be issued, without the affirmative vote or written consent of the holders of record of at least a majority of the Class A stock. Except as above provided the holders of Class B stock shall have sole voting powers on the basis of one vote for each share of Class B stock held by them.

For value received I hereby sell, assign and transfer unto

SANFORD H. COHEN, 200 shares of the Class B stock; and GEORGE COHEN,

one hundred shares of the Class B stock Shares

of the Capital Stock represented by the within Certificate and do hereby irrevocably constitute and appoint

Attorney

to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated November 27th 19 43

In the Presence of

Robert E. Rathbun

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement or any change whatever.

COM: ISSIO.'S EXHIBIT 7 (contd

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[Filed—September 28, 1944.]

641 **Commission's Exhibit 8**

BARKER, DAVISON & SHATTUCK

April 30, 1937

Mr. Harold A. Lafount
c/o Sanford H. Cohen, Esq.
580 Fifth Avenue
New York City

"Dear Mr. Lafount:

I enclose Certificate B4 of Broadcasting Service Organization, Incorporated for four hundred (400) shares without par value of the Class B stock standing in the name of Harold A. Lafount and Certificate B3 for three hundred shares of the Class B stock standing in the name of Robert C. Nordblom and endorsed in blank by him. I understand that you will send me the temporary certificates for cancellation. Will you please also sign and return the enclosed copy of this letter to serve as a receipt for these permanent certificates."

Very truly yours,

ROBERT H. DAVISON

RHC:F
Encs.

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E TO EDGE

[Filed—September 28, 1944.]

642 **Commission's Exhibit 9**

(This exhibit has been abbreviated by consent of counsel)

STATEMENT OF CHANGES IN OWNERSHIP OF STOCK, SUBSEQUENT TO JULY 15, 1934, TO BE FILED BY RADIO BROADCAST STATION LICENSEE CORPORATIONS WITH THE FEDERAL COMMUNICATIONS COMMISSION WHENEVER SUCH CHANGES OCCUR.

Name of Licensee: *Broadcasting Service Organization, Inc.* CALL LETTERS: WORL

Address of Licensee: *Myles Standish Hotel, Boston, Mass.* Frequency: 920 kc

STOCK RELINQUISHED

Name of Stockholder Prior to Transaction	*If an Officer State Title*	*Address*	*Shares & Kind of Stock Relinquished*	*Par Value*	*Date of Transfer*
Robert C. Nordblom	President	Myles Standish Hotel, Boston, Mass.	100 shares Class B. voting	No Par	March 25, 1937
William H. Eynon	Director	Myles Standish Hotel, Boston, Mass.	300 Class A Non-Voting 150 Class B Voting	No Par No Par	March 25, 1937 March 25, 1937
James K. Phelan	Director	Myles Standish Hotel, Boston, Mass.	150 Class B Voting 300 Class A Non-Voting	No Par No Par	March 25, 1937 March 25, 1937

STOCK TRANSFERRED OR PURCHASED

Name of Transferee or Purchaser	*If an Officer State Title*	*Address*	*Shares & Kind of Stock Purchased*	*Par Value*	*Amount Actually Paid for Stock*	*Date of Acquisition*
Harold A. Lafount		Wardman Part Hotel, Washington, D. C.	400 shares Class B. Voting	No Par	$30,000.00	March 25, 1937
George A. Crockwell	Treasurer	Myles Standish Hotel, Boston, Mass.	600 shares Class A Non-Voting	No Par	$26,400.00	March 25, 1937

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VERIFICATION OF STATEMENT

State of Massachusetts County of Suffolk

Before me, the undersigned officer duly authorized to administer oaths, there personally appeared /s/ Robert H. Davison, who, being first sworn by me, says on oath that he has charge of the records of Broadcasting Service Organization, Inc., a corporation, which is the licensee of Radio Station WORL, and that the above statement is true and correct to the best of his knowledge and belief.

/s/ Robert H. Davison
(Deponent)

Sworn to and subscribed before me this 27th day of March, 1937.

/s/ Emma L. Webb
Notary Public (Seal)

WORL

400

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[Filed—September 28, 1944.]

643 **Commission's Exhibit 10**

FINANCIAL STATEMENT
OF
BROADCASTING SERVICE ORGANIZATION, INC.
AS OF APRIL 30, 1937

ASSETS

Cash in Banks	$ 25,362.11
Telephone Deposit	100.00
Accounts Receivable	3,853.62
Station Equipment	51,625.82
Office Equipment	1,342.72
Studios and Equipment	5,100.00
Unearned Insurance	149.50
Supplies	1,050.25
Leasehold	10,000.00
Development Expense	38,294.60
Total Assets	$136,878.62

LIABILITIES

Accounts Payable (Current)	$ 340.20
Miscellaneous Taxes (Not due)	256.15
1000 shares class "A" stock	44,000.00
1000 shares class "B" stock (no par value)	92,282.27
Total Liabilities	$136,878.62

Docket No. 4206

App Exhibit 28

Hearing before Federal Communications Commission 5/3/37

Ward & Paul, Official Reporters

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[Filed—September 28, 1944.]

644 **Commission's Exhibit 11**

I, the undersigned, having heretofore purchased Certificate #B1 for 100 shares and Certificate #B2 for 100 shares of Class B stock no par value of the BROADCASTING SERVICE ORGANIZATION, INCORPORATED which had heretofore been owned by CHARLES A. CROCKWELL do by these presents sell, assign and transfer to SANFORD H. COHEN all of my right, title and interest in and to the said shares of stock and direct the entry of this transfer upon the books of the Corporation and the issuance of a stock certificate in accordance herewith to the transferee, his successor, assignee or nominee upon delivery and surrender of this instrument to the said Corporation.

(sd) A. BULOVA

Dated, this 30th day of
September, 1938.

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[Filed—September 28, 1944.]

645 **Commission's Exhibit 12**

May 1, 1943

Mr. Harold A. Lafount
730 Fifth Avenue
New York City

Dear Mr. Lafount:

As you know some time ago I sold my stock in WORL, through Mr. Davison, to you or your nominee. This sale has rankled in my mind ever since, due to the fact that it was represented to me by Mr. Davison that my stock was necessary to complete the sale of the Station which was contemplated at that time. I was also given to understand that I was being treated the same as other stockholders would be if the sale were concluded. I naturally assumed this to be the case and therefore sold my holdings. Of course, the sale never went through, and the earnings of the Station from then on jumped considerably. I have always had the feeling that I was not treated fairly, and therefore this letter to you.

Will you kindly advise me how you feel about this matter?

Very truly yours,

(sd) Robert C. Nordblom

R COPY

[Filed—September 28, 1944.]

646 **Commission's Exhibit 13**

HAROLD A. LAFOUNT
501 MADISON AVENUE
NEW YORK CITY

May 11, 1943

Mr. Robert C. Nordblom
18 Oliver Street
Boston, Mass

Dear Mr. Nordblom:

Your letter dated May 1, 1943 and addressed to me at 730 Fifth Avenue, was received today. It was held there by mistake and later forwarded to me here—hence the delay in making reply.

I was surprised to learn that you were not perfectly satisfied with your stock transaction involving your interest in WORL. I can quite understand your feelings. I sometimes sell at the wrong time and when I find the price has increased I, too, feel like kicking myself. However, I do not think this should apply in your case.

As you know, a radio station is only as good as its manager. WORL lost plenty after I purchased the Crockwell interest, but finally I found a hard-working manager who did a lot for the Station, but being only a daytime operation he recently showed signs of discontent and for a while I feared I should lose him and I knew by experience that my chances of getting anyone else to manage the Station successfully were indeed very remote. However, by making him manager of WCOP, a full time station, it would give him more time to sell and therefore increase his commissions.

BLEED THROUGH – POOR

I did not want WORL to lose its prestige and business so that I made Mr. Lasker manager of both stations, on a temporary basis. Personally, I think WCOP will soon require all his time, in which event I must use Mr. Armstrong or someone else to manage WORL.

Consequently, to assume WORL is out of the woods is a mistake. I have not yet been able to pay a dividend on WORL stock, or even the interest on preferred stock, particularly for the reason that the Station has a very unsatisfactory tax base. As you well know, it was losing money in 1938. Consequently all profits are subject to 90% tax. The net result is that although the Station is doing more business than it did a few years ago, it is not nearly as good an investment as a station with a better tax base even though it may be doing less business.

Consequently, you should not feel that your judgment was poor, or permit the transaction to trouble your mind any more.

As far as your feeling that you were not treated fairly —I am at a loss to understand such a feeling. I was expecting to sell the Station and wanted to include your stock, if that was satisfactory to you. I am sure every consideration was shown you, and I trust that as you recall all the details of the transaction, you will appreciate that fact.

Anticipating the pleasure of seeing you in the near future, and with kindest regards, I am

Very truly yours,

(sd) Harold A. Lafount

R COPY

[Filed—September 28, 1944.]

648 **Commission's Exhibit 14**

HAUSSERMANN, DAVISON & SHATTUCK
15 State Street
Boston

November 24, 1943

Mr. Robert C. Nordblom
50 Congress Street
Boston, Mass

Dear Bob:

I enclose check of Harold A. Lafount in the amount of $750 drawn on the Chase National Bank of New York City. This check is given to you in full payment for 100 shares of the Class B stock of Broadcasting Service Organization, Inc.

It is understood that as a part of this transaction you are to receive from Mr. Lafount a release of your obligations under a certain agreement between Mr. Lafount, you and George A. Crockwell dated March 16, 1937.

Very truly yours,

(sd) R. H. Davison

BLEED THROUGH – POO

[Filed—September 28, 1944.]

649 **Commission's Exhibit 15**

November 24, 1943

Mr. Harold A. Lafount
501 Madison Avenue
New York, N. Y.

Dear Mr. Lafount:

I acknowledge receipt from you of the sum of $750 with the $1,500 previously paid me in full payment for 100 shares of the Class B stock of Broadcasting Service Organization, Inc.

I am sorry that this purchase has been hanging fire for such a long period, but pleased that it is not satisfactorily completed.

Very truly yours,

(sd) ROBERT C. NORDBLOM

R COPY

[Filed—September 28, 1944.]

650 **Commission's Exhibit 16**

HAROLD A. LAFOUNT
501 MADISON AVENUE
NEW YORK CITY

November 24, 1943

Mr. Robert C. Nordblom
50 Congress Street
Boston, Mass

Dear Mr. Nordblom:

Under date of March 16, 1937 you and George A. Crockwell agreed with me to pay or cause to be paid all of the debts and obligations of Broadcasting Service Organization, Inc., existing as of the close of business March 25, 1937, excepting certain specified matters therein more fully set forth. In consideration of your sale to me of 100 shares of the Class B stock of Broadcasting Service Organization, Inc., I hereby release you from any and all obligation under said agreement.

Very truly yours,

(sd) HAROLD A. LAFOUNT

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[Filed—September 28, 1944.]

651 **Commission's Exhibit 17**

(a)

File No.	*Type of Application*	*Dated*	*Filed*
B1-P-1751	Regular broadcast station construction permit	4/10/37	4/19/37

Q. 4(b) If applicant is a corporation, give the names and addresses of the officers, directors, and principal stockholders and state specifically what other business or businesses each of these parties is directly or indirectly interested in; explain fully? (Attach additional sheets if necessary.)

A. Harold A. Lafount, Pres., Wardman Park Hotel, Wash., D. C., Real Estate, Investments; Robert C. Nordblom, V. P. Myles Standish Hotel, Boston, Mass. Real Estate; Robert H. Davison, Myles Standish Hotel, Boston, Mass., Attorney. Sec. Treas.

Q. 8(d) Give names, addresses, and citizenship of (1) incorporators, (2) directors, (3) officers, and (4) stockholders; the offices held by each stockholder. (If this information in complete form is now on file and there is no change, reference thereto may be made.)

A. Incorporators, — On File Officers, — On File
Directors, —On File Stockholders — On File

Signed by: Harold A. Lafount, President
April 10, 1937

OOR COPY

652 (b)

File No.	*Type of Application*	*Dated*	*Filed*
B1-L-626	Regular broadcast station license	6/15/37	6/18/37

11. Applicant reaffirms the truth, as of the date of this application, of all statements made in the application for construction permit pursuant to which said construction permit was granted.

Signed by: Harold A. Lafount
June 15, 1937

653 (c)

File No.	*Type of Application*	*Dated*	*Filed*
B1-R-205	Renewal of regular broadcast station license	6/26/37	7/16/37

Q. 3(b) If applicant is a corporation, give the names and addresses of the officers, directors, and principal stockholders and state specifically what other business or businesses each of these parties is directly or indirectly interested in; explain fully! (Attach additional sheets if necessary.)

A. George A. Crockwell, 75 Federal St., Boston, Mass. Merchandise Broker. Robert C. Nordblom, 18 Oliver St., Boston, Mass. Real Estate Management. Harold A. Lafount, Wardman Park Hotel, Washington, D. C.

Q. 7(d) Give names and addresses and citizenship of all stockholders owning and/or voting 10 percent or more of applicant's stock and percentage of stock held by each.

A. On File.

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Q. 7(d) *as amended,* July 28, 1937, and signed by Harold A. Lafount, Pres.

"George Crockwell, Myles Standish Hotel, Boston, Mass., 1000 shares preferred stock, 200 shares common stock, Citizen of the U. S.

"Harold A. Lafount, Wardman Park Hotel, Washington, D. C., 400 shares common stock, Citizen of the U. S.

"Robert G. Nordblom, 400 shares common stock, Citizen of the U. S., Myles Standish Hotel, Boston, Mass."

Q. 29. Applicant's last application for station license is to be considered as part of this application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars:

A. ——

Signed by: Harold A. Lafount, Pres.
June 26, 1937

654 (d)

File No.	*Type of Application*	*Dated*	*Filed*
B1-R-205	Renewal of regular broadcast station license	12/28/37	12/28/37

Q. 3(b) If applicant is a corporation, give the names and addresses of the officers, directors, and principal stockholders and state specifically what other business or businesses each of these parties is directly or indirectly interested in; explain fully? (Attach additional sheets if necessary.)

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A. See attached sheet.

George A. Crockwell, 75 Federal Street, Boston, Mass. Merchandise Broker. Robert C. Nordblom, 18 Oliver Street, Boston, Mass. Real Estate Management. Harold A. Lafount, Wardman Park Hotel, Washington, D. C.

Q. 7(d) Give names and addresses and citizenship of all stockholders owning and/or voting 10 percent or more of applicant's stock and percentage of stock held by each.

A. See attached sheet.

Signed by: Harold A. Lafount, Pres.
December 28, 1937.

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655 (d1)

State of New York } ss.:
County of New York }

Comes now Broadcasting Service organization, Inc., licensee of Radio Station WORL at Boston, Massachusetts and requests that its application for renewal of station license be corrected as follows:

Strike out the answer to Section 3 (b) and insert in lieu thereof: Harold A. Lafount, President and Director, Wardman Park Hotel, Washington, radio broadcasting, investments and real estate.

Helen Rose, Treasurer, 2134 Homecrest Avenue, Brooklyn, New York, private secretary.

Robert C. Nordblom, Director, 18 Oliver Street, Boston, Massachusetts, real estate management.

Robert H. Davison, Director and Clerk, 15 State Street, Boston, Massachusetts, attorney.

Respectfully requested,

Broadcasting Service Organization, Inc.

By Harold A. Lafount

Subscribed and sworn to before me this 23rd day of December, 1937.

Signed: Mildred G. Burnam

COPY

656 (d2)

AMENDMENT

Washington
District of Columbia } ss.:

Comes now Broadcasting Service Organization, Inc., licensee of Radio Station WORL at Boston, Massachusetts, and requests that its application for renewal of station license be corrected as follows:

Add the following information to Section 3, b:

George A. Crockwell, Boston, Massachusetts, Merchandise Broker.

Respectfully submitted,

BROADCASTING SERVICE ORGANIZATION, INC.

By Harold A. Lafount

Subscribed and sworn to before me this 24th day of January, 1938.

signed: Mildred G. Murnan
Notary Public

657 (d3)

SECTION 7(d)

George A. Crockwell	Boston, Massachusetts	100% Class A Stock 20% Class B Stock
Robert C. Nordblom	Boston, Massachusetts	40% Class B Stock
Harold A. Lafount	Washington, D. C.	40% Class B Stock

All citizens of the United States.

BLEED THROUGH – POOR

658 (c)

File No.	*Type of Application*	*Dated*	*Filed*
B1-R-205	Renewal of regular broadcast station license	6/25/38	7/1/38

Q. 3(b) If applicant is a corporation, give the names and addresses of the officers, directors, and principal stockholders and state specifically what other business or businesses each of these parties is directly or indirectly interested in; explain fully? (Attach additional sheets if necessary.)

A. George A. Crockwell, 75 Federal St., Boston, Mass.—Merchandise Broker.

Robert C. Nordblom, 18 Oliver St., Boston, Mass.—Real Estate Management.

Harold A. Lafount, Wardman Park Hotel, Washington, D. C.

All above are officers, directors and principal stockholders.

Q. 3(b) *as amended* July 20, 1938, and signed by Harold A. Lafount, Pres.

"Officers: Harold A. Lafount, President, 580 5th Ave., New York, New York, Real Estate Investments; Helen Rose, Treasurer, 580 5th Ave., New York, New York, Stenographer; Robert H. Davison, Clerk, 45 State Street, Boston, Mass., no other business.

"Directors: Robert C. Nordblom, 18 Oliver St., Boston, Mass., Real Estate Management; Harold A. Lafount, see above; Robert H. Davison, see above.

"Stockholders: Harold A. Lafount, see above; Robert C. Nordblom, see above; George A. Crock-

COPY

well, 245 Grove St., Framingham, Mass., Merchandise Broker.

Q. 7(d) Give names and addresses and citizenship of all stockholders owning and/or voting 10 percent or more of applicant's stock and percentage of stock held by each.

A. See attached sheet.

Q. 29. Applicant's last application for station license is to be considered as part of this application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars:

A. None.

Signed by: Harold A. Lafount, Pres.

659 (e1)

INFORMATION UNDER SECTION 7, d

Stockholders	*Nationality*	*Address*	*No. of shares*
CLASS "A" PREFERRED—NO PAR VALUE			
George A. Crockwell	U. S.	245 Grove St. Framingham, Mass.	900 shares
Lester Endlar	U. S.	161 Devonshire St. Boston, Mass.	100 shares
CLASS "B" —NO PAR VALUE			
George A. Crockwell	U. S.	245 Grove St. Framingham, Mass.	200 shares
Robert C. Nordblom	U. S.	18 Oliver St. Boston, Mass.	400 shares
Harold A. Lafount	U. S.	Wardman Park Hotel Washington, D. C.	400 shares

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660 (f)

File No.	*Type of Application*	*Dated*	*Filed*
B1-R-205	Renewal of regular broadcast station license	12/27/38	12/29/38

Q. 3(b) If applicant is a corporation, give the names and addresses of the officers, directors, and principal stockholders and state specifically what other business or businesses each of these parties is directly or indirectly interested in; explain fully? (Attach additional sheets if necessary.)

A. George A. Crockwell, 75 Federal Street, Boston, Mass., Merchandise Broker. Sanford H. Cohen, 1111 Park Avenue, New York City, Attorney at Law. Harold A. Lafount, Wardman Park Hotel, Washington, D. C.

Q. 7(d) Give names and addresses and citizenship of all stockholders owning and/or voting 10 percent or more of applicant's stock and percentage of stock held by each.

A. Harold A. Lafount, Wardman Park Hotel, Wash. D. C. 40%; Robert C. Nordblom, 18 Oliver St., Boston, Mass. 40%; Sanford H. Cohen, 1111 Park Ave., N. Y. C. 20%. All citizens of the U. S.

Q. 29 Applicant's last application for station license is to be considered as part of this application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars: ——

A. No answer furnished.

Signed by: HAROLD A. LAFOUNT, Pres.
December 27, 1938

COPY
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661 (g)

File No.	*Type of Application*	*Dated*	*Filed*
B1-R-205	Renewal of regular broadcast station license	6/15/39	6/19/39

Q. 3(b) If applicant is a corporation, give the names and addresses of the officers, directors, and principal stockholders and state specifically what other business or businesses each of these parties is directly or indirectly interested in; explain fully? (Attach additional sheets if necessary.)

1/

A. George A. Crockwell, 75 Federal St., Boston, Mass. Merchandise Broker. Robert C. Nordblom, 18 Oliver St., Boston, Mass., Real Estate Management. Harold A. Lafount, Wardman Park Hotel, Washington, D. C.

Q. 7(d) Give names and addresses and citizenship of all stockholders owning and/or voting 10 percent or more of applicant's stock and percentage of stock held by each.

A. On File.

Q. 7(d), *as amended*, July 20, 1939, signed by Harold A. Lafount.

A. "Harold A. Lafount, 630 5th Ave. N. Y. C., 40%; Robert C. Nordblom, 18 Oliver St., Boston, Mass., 40%; Sanford H. Cohen, 1111 Park Ave., New York City, 20%. All are citizens of the U. S."

1/ Q. 3(b), *as amended*, July 20, 1939, signed by Harold A. Lafount.

BLEED THROUGH – POOR

A. "Harold A. Lafount, 630 5th Ave., New York City, President, director and stockholder, real estate and investments; George Cohen, 630 5th Ave., New York City, Treasurer, attorney; Robert C. Davison, 45 State St., Boston, Mass., Clerk and director, attorney; Robert C. Nordblom, 18 Oliver St., Boston, Mass., director and stockholder, real estate management; Sanford H. Cohen, 1111 Park Ave., New York City, attorney, stockholder only."

Q. 29. Applicant's last application for station license is to be considered as a part of this application a d the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars:

A. No answer furnished.

Signed by: Harold A. Lafount, Pres.

June 15, 1939

COPY

662 (h)

File No.	*Type of Application*	*Dated*	*Filed*
B1-R-205	Renewal of regular broadcast station license.	1/27/40	1/27/40

Q. 3(b) If applicant is a corporation, give the names and addresses of the officers, directors, and principal stockholders and state specifically what other business or businesses each of these parties is directly or indirectly interested in; explain fully? (Attach additional sheets if necessary.)

A. Robert C. Nordblom, 18 Oliver St., Boston, Mass. Real Estate Management. Harold A. Lafount, Wardman Park Hotel, Washington, D. C.

See attached statement.

Q. 7(d) Give names and addresses and citizenship of all stockholders owning and/or voting 10 percent or more of applicant's stock and percentage of stock held by each.

A. See attached statement.

Q. 29. Applicant's last application for station license is to be considered as part of this application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars:

A. No answer furnished.

Signed by: Harold A. Lafount, Pres.

January 27, 1940.

BLEED THROUGH – POOR

663 (h1)

COPY

Supplemental information under Section 3(b).

Harold A. Lafount, 630 Fifth Avenue, New York City, president, director, and stockholder, real estate and investments.

George Cohen, 630 Fifth Avenue, New York City, treasurer, attorney.

Robert C. Davison, 45 State Street, Boston, Massachusetts, Clerk and director, attorney.

Robert C. Nordbloom, 18 Oliver Street, Boston, Massachusetts, director and stockholder, real estate management.

Sanford H. Cohen, 1111 Park Avenue, New York City, stockholder only, attorney.

Information with respect to Section 7(d).

Harold A. Lafount, 630 Fifth Avenue, New York City, 40%.

Robert C. Nordblom, 18 Oliver Street, Boston, Massachusetts, 40%.

Sanford H. Cohen, 1111 Park Avenue, New York City, 20%.

All are citizens of the United States.

COPY

664 (i)

File No.	*Type of Application*	*Dated*	*Filed*
B1-P-2835	Regular broadcast station construction permit	4/1/40	4/1/40

Q. 9(f) Give names, addresses, and citizenship of all (1) incorporators, (2) directors, (3) officers, and the office held by each:

A. Incorporators: On file—no change.

Directors:

Robert C. Nordblom	Washington, D. C.	U. S.
Robert c. Nordblom	77 Reservoir Rd. Quincy, Mass.	U. S.
Robert H. Davison	99 Irving St. Cambridge, Mass.	U. S.

Officers:

Harold A. Lafount	Washington, D. C., Pres.	U. S.
Robert H. Davison	Cambridge, Mass. Clerk	U. S.
George Cohen	New York, N. Y. Treas.	U. S.

Q. 9(g) If there are not more than 100 stockholders, give (1) the name, address, and citizenship of each; (2) the number of each class of shares held; and (3) the percentage of total issued stock held by each. If more than 100 stockholders, give the information required herein with respect to all persons owning or controlling 10 percent or more of the voting stock of applicant corporation:

A. Harold A. Lafount, Washington, D. C.
U. S. 400 com. 40%, 900 pref. 90%

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Robert C. Nordblom, Quincy, Mass.
U. S. 400 com. 40%

Sanford H. Cohen, New York, N. Y.
U. S. 200 com. 20%

Lester Endlar, 120 Sewall Ave., Brookline, Mass.
U. S. 100 pref. 10%

Q. 39. All the statements made in the application and attached exhibits are considered material representations, and all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

Signed by: Harold A. Lafount, Pres.
April 1, 1940

COPY

665 (j)

File No.	*Type of Application*	*Dated*	*Filed*
B1-L-1148	Regular broadcast station license	5/4/40	5/4/40

Q. 12. Applicant reaffirms the truth, as of the date of this application, of all statements made in the application for construction permit pursuant to which said construction permit was granted.

Signed by: Harold A. Lafount, Pres.
May 5, 1940

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666 (k)

File No.	*Type of Application*	*Dated*	*Filed*
B1-R-205	Renewal of regular broadcast station license	5/31/40	5/31/40

Q. 3(b) If applicant is a corporation, give the names and addresses of the officers, directors, and principal stockholders and state specifically what other business or businesses each of these parties is directly or indirectly interested in; explain fully? (Attach additional sheets if necessary.)

A. Robert C. Nordblom, 18 Oliver St., Boston, Mass. Real Estate Management—Director and stockholder. Harold A. Lafount, Wardman Park Hotel, Washington, D. C., Real Estate and Investments. President, director and stockholder. Robert H. Davison, 99 Irving St., Cambridge, Mass., Lawyer, Clerk and Director. George Cohen, New York City, Lawyer, Treasurer, stockholder.

BLEED THROUGH – POOR

Q. 7(d) Give names and addresses and citizenship of all stockholders owning and/or voting 10 percent or more of applicant's stock and percentage of stock held by each.

A. Harold A. Lafount, Washington, D. C.
— 900 preferred 90%
400 common 40%

Robert C. Nordblom, Boston, Mass.
— 400 common 40%

Sanford H. Cohen, New York City— 200 common 20%

Lester Endlar, Brookline, Mass.— 100 preferred 10%
U. S. Citizens.

Q. 29. Applicant's last application for station license is to be considered as part of this application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars:

A. No answer furnished.

Signed by: Harold A. Lafount, Pres.
May 31, 1940

COPY

667 (l)

File No.	*Type of Application*	*Dated*	*Filed*
B1-ML-1034	Modification of license	9/28/40	10/4/40

Q. 25. Applicant states that if any further information is necessary for a full disclosure with respect to construction, location, facilities, operation, service, assets, obligations, or otherwise not already fully explained, the following is a complete disclosure with respect thereto:

A. Full information in this application.

Signed by: Harold A. Lafount, Pres.
September 28, 1940

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668 (m)

File No.	*Type of Application*	*Dated*	*Filed*
B1-L-1271	Regular broadcast station license	10/26/40	10/26/40

Q. 12. Applicant reaffirms the truth, as of the date of this application, of all statements made in the application for construction permit pursuant to which said construction permit was granted.

Signed by: Harold A. Lafount, Pres.
October 26, 1940

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669 (n)

File No.	*Type of Application*	*Dated*	*Filed*
B1-L-1417	Regular broadcast station license	5/12/41	5/14/41

(See application B1-P-1731 dated May 11, 1937 referred to in this application).

Q. 12. Applicant reaffirms the truth, as of the date of this application, of all statements made in the application for construction permit pursuant to which said construction permit was granted.

Signed by: Harold A. Lafount
May 12, 1941

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670 (o)

File No.	*Type of Application*	*Dated*	*Filed*
B1-ML-1097	Construction permit for an existing standard broadcast station license	9/29/41	9/29/41

Q. 5(a) Do the reports filed by applicant under sections 1.361 of the Rules of Practice and Procedure and 43.1 of the Rules and Regulations reflect substantially applicant's status with regard to all conditions stated in such reports as of the date this application was executed?

A. Yes.

Signed by: Harold A. Lafount, Pres.
September 29, 1941

PY

671 (p)

File No.	*Type of Application*	*Dated*	*Filed*
B1-R-205	Renewal of standard broadcast station license	1/29/42	1/30/42

Q. 9(c) Has applicant filed the report and the necessary supplemental reports required by section 43.1 of the Rules of Practice and Procedure? *3/*

A. Yes.

3/ Action upon this application will be held in abeyance, pending the filing of such reports.

Signed by: Harold A. Lafount
January 29, 1942

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672 (q)

File No.	*Type of Application*	*Dated*	*Filed*
	Renewal of standard auxiliary broadcast station license	2/21/42	2/21/42

Q. 23. Applicant's last application for station license is to be considered as part of this application and the regulatory power of the United States, because of the previous use of the same, whether by license or otherwise, and requests a renewal of its existing license in accordance with this application.

Signed by: Harold A. Lafount
February 21, 1942

BLEED THROUGH – POOR CO

673 (r)

File No.	*Type of Application*	*Dated*	*Filed*
B1-R-205	Renewal of standard broadcast station license	5/18/42	5/18/42

Q. 7(c) Has applicant filed the report and the necessary supplemental reports required by sec. 43.1 of the Rules?

A. Yes.

Q. 15. Applicant's last application for station license is to be considered as part of the application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars.

A. None.

Signed by: Harold A. Lafount, Pres.
May 18, 1942

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674 (s)

File No.	*Type of Application*	*Dated*	*Filed*
	Renewal of auxiliary standard broadcast station license	5/25/42	5/25/42

Q. 15. Applicant's last application for station license is to be considered as part of this application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars.

A. None.

Signed by: Harold A. Lafount, Pres.
May 25, 1942

OPY

[Filed—September 28, 1944.]

675 **Commission's Exhibit 18**

State of New York, }
County of New York, } ss.:

Comes now, Harold A. Lafount, who, being first duly sworn on oath, deposes and says that he is the President of the Broadcasting Service Organization, Inc., licensee of Radio Station WORL and in answer to the letter of the Federal Communications Commission of April 20, 1937, states that there are no contracts in existence either written or oral, which in any way affect the control of Radio Station WORL, nor are there any contracts in effect which in any wise affect the voting of any stock or rights of this station other than those contracts which have been already filed with the Commission.

(sd) HAROLD A. LAFOUNT

Subscribed and sworn to before me this 29 day of April, 1937.

(sd) GEORGE COHEN
Notary Public
Notary Public, Queens County
Term expires March 30, 1938
Queens Co. Clk. No. 281, Reg. No. 296
N. Y. C. Clk. No. 80, Reg. No. 8C47
My Commission expires

BLEED THROUGH – POOR C

[Filed—September 28, 1944.]

676 **Commission's Exhibit 19**

Washington, District of Columbia, } ss.:

Comes now, Harold A. Lafount and deposes and says that he is president of the Broadcasting Service Organization, Inc., licensee of Radio Station WIXQ of Boston, Massachusetts, and in reply to an inquiry from the Commission dated June 11, states that there are no other contracts or agreements which in any wise affect the control or operation of Radio Station WIXQ than those which have already been filed with the Commission.

Respectfully submitted,

BROADCASTING SERVICE ORGANIZATION, INC.

By (sd) HAROLD A. LAFOUNT
Harold A. Lafount, President

Subscribed and sworn to before me this 18th day of June, 1937.

(sd) CELESTE FORD QUISENBERRY
Notary Public, D. C.
My Commission Expires Sept. 9, 1941

OPY

[Filed—September 28, 1944.]

677 **Commission's Exhibit 20**

BROADCASTING SERVICE ORGANIZATION INCORPORATED
(a Massachusetts Corporation)

Stock Ownership as of April 30, 1937

Class "A" "Preferred" no par Value

Certificate	# A-1	George A. Crockwell	90	shares
"	# A-2	" " "	455	"
"	# A-3	" " "	455	"
		Total authorized and issued	1,000	"

Class "B" "Common" no par value

Certificate	# B-1	George B. Crockwell	100	shares
"	# B-2	" " "	100	"
"	# B-3	Robert G. Nordblom	300	"
"	# B-4	Harold A. Lafounte	400	"
"	# B-5	Robert C. Nordblom	100	"
			1,000	

Docket No. 4206

App. Exhibit 26

Hearing before Federal Communications Commission 5/3/37

Ward & Paul, Official Reporters.

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[Filed—September 28, 1944.]

Commission's Exhibit 21

(This exhibit has been abbreviated by consent of counsel)

F.C.C. FORM No. 728

ORIGINAL REPORT

WORL

(Submit in duplicate to the Federal Communications Commission, Washington, D. C.)

STATEMENT OF INFORMATION REQUIRED TO BE FILED BY PERMITTEE OR LICENSEE CORPORATION UNDER RULE 340.01

(As of.....day of.....19....)

I. IDENTITY OF LICENSEE

Name of Licensee BROADCASTING SERVICE ORGANIZATION, INC.

Address: Myles Standish Hotel, Boston, Mass.

List here Call Letters of Station or Stations Covered By This Report W.O.R.L.

Location Myles Standish Hotel, Boston, Mass.

Incorporated under the laws of the State of Massachusetts

Date June 15, 1931

(If articles of incorporation have not heretofore been furnished to the Commission, attach as an exhibit a properly certified copy of same, together with copies of all amendments thereto. If this corporation is successor to another, or to any other enterprise, state fully in an attachment to the facts connected with such successorship.)

II. CLASSIFICATION OF STOCK

		Capital Stock		
		Common	*Preferred*	*Other*
		Class "B"	Class "A"	
(a)	No. of shares authorized	1000	1000	
(b)	No. of shares unissued	None	None	
(c)	No. of shares issued (a) Minus (b)	1000	1000	
(d)	No. of shares in Treas., or otherwise held (specify)	None	None	
(e)	No. of shares outstanding (c) Minus (d)	None	None	
	1. Voting	1000	....	
	2. Non-Voting	....	1000	
(f)	Aggregate par (or stated) value:			
	1. Issued stock	$	$	$
	2. Stock in Treas. or otherwise held	$	$	$
	3. Outstanding stock (f) 1 Minus (f) 2	$	$	$
(g)	Average consideration received by issuing corporation per share of issued stock	$	$ 44,000	$
(h)	Average cost of reacquisition per share of reacquired stock in Treasury	$ None	$ None	$

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III. STOCKHOLDERS AND VOTING POWERS

Line No.**	STOCKHOLDERS Name and Title	Legal Residence	Citizenship	STOCK OWNED Common Shares	Common Votes	Preferred Shares	Preferred Votes
	Officers:						
	Harold A. Lafount President	580—5th Ave., N. Y. C.	Naturalized USA	400	400	None	None
	Helen Rose Treasurer	580—5th Ave., N. Y. C.	Native Born, USA	None	None	None	None
	Robert H. Davison Clerk	15 State St., Boston, Mass.	Native Born, USA	None	None	None	None
	Directors:						
	Robert C. Nordblom	18 Oliver St., Boston, Mass.	Native Born, USA	400	400	None	None
	Harold A. Lafount	See above	See above	see above	see above	see above	see above
	Robert R. Davison	" "	" "	" "	" "	" "	" "
	Others:						
	George A. Crockwell	245 Grove St., Farmingham, Mass.	Native Born, USA	200	200	~~900~~	None
	Lester Endlar	161 Devenshire St., Boston, Mass.		None	None	~~100~~	None

If stock is voted by a person other than the record holder, state the name, legal residence, and citizenship of such person and attach as an exhibit a copy of the contract or other instrument authorizing same.

If stock is held by a corporation or other entity, state the name,* legal residence, and citizenship of the person or persons voting such stock.

Line No.**	Name, Legal Residence & Citizenship	Ex. No.	Name, Legal Residence & Citizenship	Ex. No.

* If stock is beneficially held by a person (natural or artificial) other than the record holder (and such beneficial owner has not been identified in reporting the voter other than record holder) state the name, legal residence and citizenship if a natural person; and if a corporation or other form of association or organization, state the name, legal residence, and citizenship of the person or persons empowered to designate the voter or voters of the stock, making these statements on an exhibit referred to by number in this column.

** Line Nos. should correspond with respect to each stockholder to whom the two sections of this table relate.

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IV. CONTRACTS OR OTHER INSTRUMENTS

Furnish the information indicated below relative to all contracts (written or oral) or other instruments which affect or concern:

(1) The voting rights of any stock. (2) The ownership or control over the station or rights of interest therein. (3) The use, management, or operation of the station by any person or entity, other station, chain of stations, or chain broadcasting company. *(4) The sale or disposition of time amounting to two hours or more daily to (a) any other station, chain of stations, or chain broadcasting company, and/or (b) any person or entity. *(5) The purchase or acquisition of time amounting to two hours or more daily from (a) any other station, chain of stations, or chain broadcasting company, and/or (b) any person or entity.

Furnish certified copies of all contracts (written or oral). Oral contracts shall be reduced to writing.

Name, address, and citizenship of person or entity with whom contract or instrument entered into	*Effective and termination dates of contract or instrument*	*Subject matter covered by Contract or instrument*	*Certified copy is attached at Exhibit No.*	*If previously filed, state approximate date furnished to the Commission*
NONE	NONE	NONE	NONE	NONE

V. VERIFICATION OF STATEMENT

Washington, District of Columbia } ss.:

HAROLD A. LAFOUNT being duly sworn upon his oath (or affirmed according to law) deposes and says that he is a duly authorized officer of the licensee corporation, and as such has charge of the records of the licensee; that the facts stated in the foregoing statement and all exhibits attached are true to his own knowledge except as to statements made upon information and belief and as to such statements he believes them to be true.

/s/ HAROLD A. LAFOUNT
(Name of affiant and office held)

Subscribed and sworn to before me this 11th day of July 1938.

/s/ MILDRED G. MUMAN
(Notary Public)

(SEAL)
(Notary Public's seal must be affixed where law of jurisdiction requires, otherwise state that law does not require seal.)

My commission expires Nov. 15, 1942.

* If more than one contract is made between the same parties concerning purchase or sale of two hours or more daily, furnish the required information relative to such contracts and submit certified copies of them.

WORL

BLEED THROUGH – POOR COPY

F.C.C. Form No. 730 [Filed September 28, 1944]

Commission's Exhibit 22

(This exhibit has been abbreviated by consent of counsel)

(Submit in duplicate to the Federal Communications Commission, Washington, D. C.)

SUPPLEMENTAL REPORT TO BE USED BY CORPORATIONS AND OTHER LICENSEES AND PERMITTEES

STATEMENT OF CHANGES IN INFORMATION REQUIRED TO BE FILED UNDER RULE 340.01 OCCURRING SUBSEQUENTLY TO DATE OF ORIGINAL REPORT

Name of Licensee Broadcasting Service Organization, Inc.

List Call Letters of Stations Covered by This Report W O R L

Address Myles Standish Hotel, Boston, Mass.

If charter has been amended since date of original report, and copy of such amendment has not been furnished, attach as an exhibit a properly certified copy thereof, and state the effect of the same .....

STOCK RELINQUISHED OR SOLD BY ONE STOCKHOLDER TO ANOTHER

Name of stock holder prior to transaction (if an officer state title)	*Legal residence*	*Citizenship*	*No. of Shares*	*Class of Stock Transferred*	*Cert. No.*	*Par or stated value*	*Amount Rec.*	*Date of transfer*	*If transferor stockholder is a corp., state name, legal residence, and citizenship of person or persons voting such stock*
George A. Crockwell	245 Grove St., Framingham, Mass.	Native born U.S.A.	200	Common Class B	B1 and B2 for 100 shares each	No par value	$100.	Sept. 30 1938	

STOCK ACQUIRED OR PURCHASED FROM ANOTHER STOCKHOLDER

Name of transferee or purchaser (if an officer state title)	*Legal residence*	*Citizenship*	*No. of Shares*	*Class of Stock received*	*Cert. No.*	*Par or stated value*	*Amount paid*	*Date of Acquisition or purchase*	*If stock is acquired or purchased by a corp., or other entity, state name, legal residence, and citizenship of person or persons voting such stock (*See Note)*
Sanford H. Cohen	1111 Park Avenue New York City	Native born U.S.A.	200	Common Class B	B6 and B7 for 100 shares each	No par value	$100.	Sept. 30 1938	

* If stock acquired is voted by a person other than record holder, state the name, legal residence, and citizenship of such person and attach as an exhibit a copy of the contract or other instrument authorizing same .....

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NEW STOCK ISSUED OR TREASURY STOCK REISSUED

Name of person purchasing or acquiring new stock (If an officer, state title)	*Legal residence*	*Citizenship*	*No. of Shares*	*Class of stock*	*Cert. No.*	*Par or stated value*	*Consideration*	*Date of acquisition or purchase*	*If stock is acquired or purchased by a corp., or other entity, state name, legal residence, and citizenship of person or persons voting such stock (*See Note)*
NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE

CAPITAL STOCK ACQUIRED BY ISSUING COMPANY

Name of holder from whom acquired (If an officer, state title)	*No. of shares and class of stock acquired*	*Cert. No.*	*Par or stated value*	*Consideration*	*Date of acquisition*	*State the name of the person voting the stock at the last meeting of stockholders, and state whether by ownership or proxy*	*State the disposition made or proposed for the stock acquired*
NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE

OFFICERS AND DIRECTORS

State whether or not there have been any changes in officers and directors since filing the original report. If so, give the name, legal residence, and citizenship of new officers and directors and date of election thereof: Yes.

HELEN ROSE resigned as Treasurer and George Cohen, 580 Fifth Avenue, New York City, native born, U.S.A., elected Treasurer on August 24, 1938.

CONTRACTS OR OTHER INSTRUMENTS

State whether or not there have been any new contracts (written or oral) or instruments entered into or modifications, extensions, or terminations of existing contracts instruments since date of original report relative to:

(1) The voting rights of any stock. (2) The ownership or control over the station or rights or interests therein. (3) The use, management, or operation of station by any person or entity, other station, chain of stations, of chain broadcasting company. *(4) The sale or disposition, to be made by corporation licensees others, of time amounting to two hours or more daily to (a) any other station, chain of stations, or chain broadcasting company, and/or (b) any person or en *(5) The purchase or acquisition, to be made by corporation licensees or others, of time amounting to two hours or more daily from (a) any other station, chai stations, or chain broadcasting company, and/or (b) any person or entity.

Furnish certified copies of all contracts (written or oral). Oral contracts shall be reduced to writing.

BLEED THROUGH – POOR COPY

Name, address, and citizenship of person or entity with whom contract or instrument entered into	*Effective and termination dates of contract or instrument*	*Subject matter covered by contract or instrument*	*Certified copy is attached as Exhibit No.*	*If previously filed, state approximate date furnished to the Commission*
NONE	NONE	NONE	NONE	NONE

NOTE: Attach all such exhibits as are necessary to bring to date, with respect to new stockholders or otherwise, the date required to be set forth in attached exhibits by Form No. 728 and/or Form No. 729.

VERIFICATION OF STATEMENT

State of New York }
County of New York } ss.:

HAROLD A. LAFOUNT being duly sworn upon his oath (or affirmed according to law) deposes and says that he is a duly authorized officer of the licensee corporation, member of the licensee partnership, or other authorized representative of the licensee, and as such has charge of the records of the licensee; that the facts stated in the foregoing statement and all exhibits attached are true to his own knowledge except as to statements made upon information and belief and as to such statements he believes them to be true.

/s/ HAROLD A. LAFOUNT Pres.
(Name of affiant and office held)

Subscribed and sworn to before me this 26th day of October 1938.

/s/ HELEN GREENLAW
(Notary Public)

(SEAL)
(Notary Public's seal must be affixed where law or jurisdiction requires, otherwise state that law does not require seal.)

My Commission expires March 30, 1940.

* If more than one contract is made between the same parties concerning the sale or purchase of two hours or more daily, furnish the required information relative to such contracts and submit certified copies of them.

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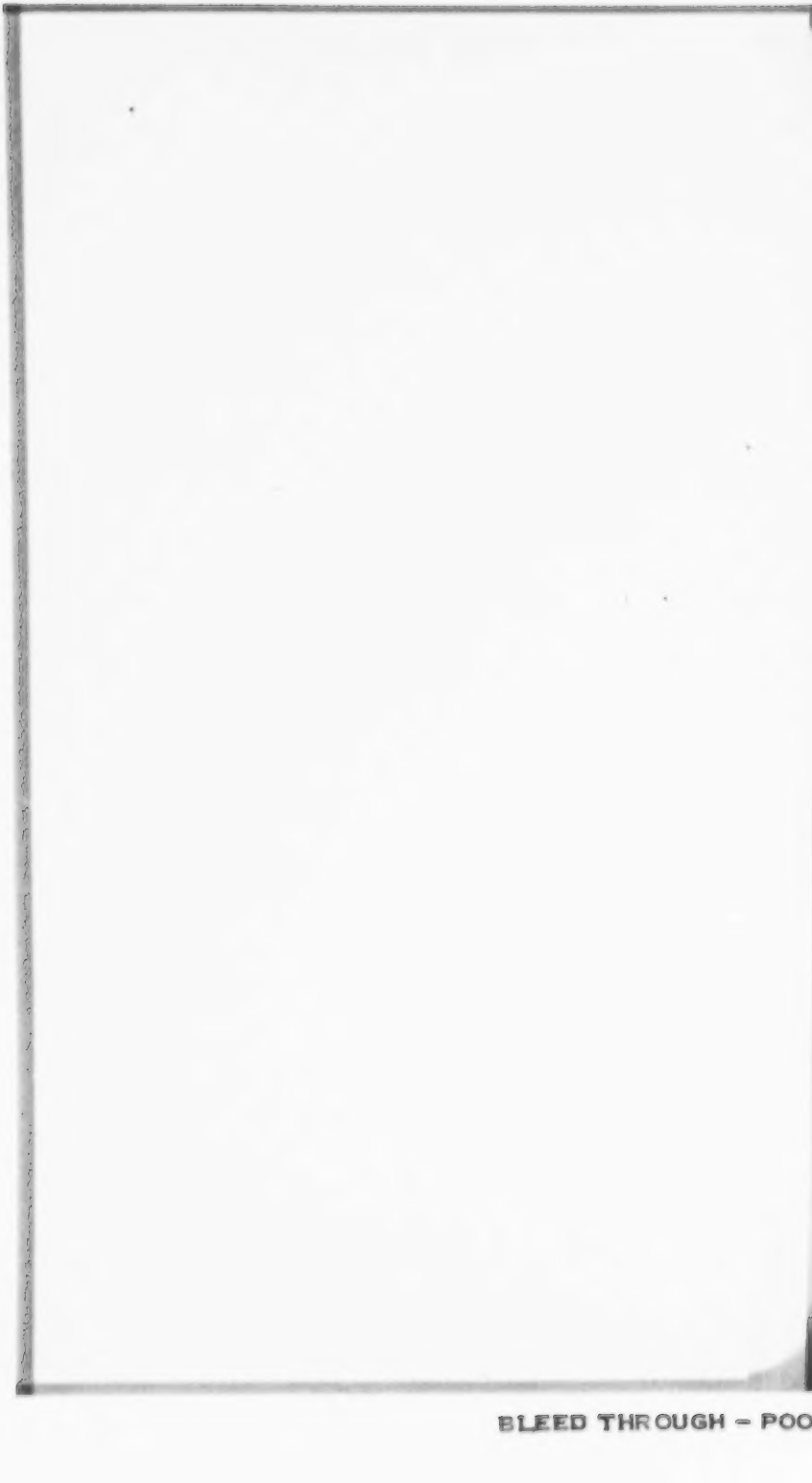

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[Filed—September 28, 1944.]

680 **Commission's Exhibit 23**

AFFIDAVIT

State of New York }
County of New York } ss.:

Comes now Harold A. Lafount, President of Broadcasting Service Organization, Incorporated, licensee of Radio Station WORL, Boston, Massachusetts and in accordance with the rules and regulations of the Commission, states that on November 9th, 1943, 100 shares of Class B common stock in the above referred to licensee corporation were transferred from Robert C. Nordblum, a citizen of the United States, whose address is 18 Oliver Street, Boston, Massachusetts, to George Cohen, a citizen of the United States, whose address is 2933 Mott Avenue, Far Rockaway, New York, for a total consideration of $1500.00.

Affiant further deposes and says that there have been no changes in the officers or directors of the licensee corporation as a result of this transfer.

(sd) Harold A. Lafount
Harold A. Lafount

Subscribed and sworn to before me this 15th day of November, 1943.

(sd) Fritzi V. Goldstein

Fritzi V. Goldstein
Notary Public, New York County
N. Y. Co. Clks. No. 353, Reg. No. 410-G-5
Commission expires March 30, 1945.

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[Filed—September 28, 1944.]

681 **Commission's Exhibit 24**

AFFIDAVIT

State of New York }
County of New York } ss.:

Comes now Harold A. Lafount, President of Broadcasting Service Organization, Incorporated, licensee of Radio Station WORL, Boston, Massachusetts and in accordance with the rules and regulations of the Commission, states that on November 27, 1943, 200 shares of Class B common stock in the above referred to licensee corporation were transferred from Robert C. Nordblom, a citizen of the United States, whose address is 18 Oliver Street, Boston, Massachusetts, to Sanford H. Cohen, a citizen of the United States, whose address is 1111 Park Avenue, New York, New York, for a total consideration of $3334.00, and that on November 27th, 1943, 100 shares of Class B common stock in the above referred to licensee corporation were transferred from Robert C. Nordblum, whose address is as above stated, to George Cohen, a citizen of the United States, whose address is 2933 Mott Avenue, Far Rockaway, New York, for a total consideration of $1666.00.

Affiant further deposes and says that there have been no changes in the officers or directors of the licensee corporation as a result of this transfer.

(sd) Harold A. Lafount
Harold A. Lafount

Subscribed and sworn to before me this 29th day of November, 1943.

(sd) Fritzi V. Goldstein
Fritzi V. Goldstein
Notary Public, New York County
N. Y. Co. Clks. No. 353, Reg. No. 410-G-5
Commission expires March 30, 1945.

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[Filed—November 30, 1944.]

682 **Commission's Exhibit 25**

FREDERICK WM. GREENFIELD & CO.
CERTIFIED PUBLIC ACCOUNTANTS
500 Fifth Avenue
New York

BROADCASTING SERVICE ORGANIZATION, INC.
(W O R L)
FINANCIAL STATEMENTS
DECEMBER 31, 1937

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683 BROADCASTING SERVICE ORGANIZATION, INC. (W O R L)

MILES STANDISH HOTEL
Boston, Massachusetts

BALANCE SHEET

DECEMBER 31, 1937

ASSETS

Cash—State Street Trust Co. ...	$ 468.16	
—On Hand	260.32	
		$ 728.48
Notes Receivable	$ 60.11	
Accounts Receivable	4,539.26	
	$ 4,599.37	
Less—Reserve for Bad Debts	$ 948.27	
		$ 3,651.10

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Transmitter and Studio Equipment	$59,425.75	
Less—Reserve for Depreciation	12,497.56	
		$46,928.19
Development Expense		38,294.60
Leasehold		10,000.00
Deposits Receivable		134.50
Cash—Pilgrim Trust Co.—Restricted	$ 55.68	
Less—Reserve for Contingent Liability	55.68	
TOTAL ASSETS		$99,736.87
LIABILITIES		
Loans Payable	$ 7,500.00	
Accounts Payable and Accruals	4,125.88	
TOTAL LIABILITIES		$11,625.88
NET WORTH		$88,110.99
Made up as follows:		
Capital Stock—Class A—1,000 shares—No Par Value	$44,000.00	
—Class B—1,000 shs. — No Par Value	56,676.42	
Deficit—December 31, 1937	*12,565.43*	
		$88,110.99

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684 BROADCASTING SERVICE ORGANIZATION, INC.

STATEMENT OF INCOME, PROFIT AND LOSS FOR THE YEAR ENDING DECEMBER 31, 1937.

Sales			$46,319.55
Deduct—Agency Discount and Salesmen's Commission	$7,963.38		
—Frequency Discount	1,504.08		
—License Fees	2,736.09		
		12,203.55	
NET SALES			$34,116.00
OPERATING EXPENSES:			
Salaries	$4,547.70		
Rent	862.07		
Light and Power	945.50		
Lines	658.00		
Repairs and Maintenance	1,452.16		
		$ 8,465.43	
STUDIO EXPENSES:			
Salaries	$3,417.90		
Repairs and Maintenance	478.73		
Lines	1,324.05		
Remote Expense	100.40		
Talent	812.10		
Electrical Transcriptions, Music and Script	4,114.33		
		$10,247.51	

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General and Administrative Expenses:			
Salaries	$9,678.22		
Telephone and Telegraph	3,197.99		
Stationery, Printing and Postage	1,567.77		
Advertising and Publicity	509.50		
Promotional	1,194.96		
Insurance	665.67		
Legal	2,002.47		
Interest	422.81		
Taxes—Federal Old Age Benefit	220.05		
—Federal Unemployment Insurance	45.19		
—Federal Capital Stock	679.10		
—Massachusetts Unemployment Insurance	378.45		
—Boston Personal Property	96.75		
—Massachusetts	194.79		
Bad Debts	642.47		
Miscellaneous	1,710.31		
		$23,206.50	
			$41,919.44
Loss			$ 7,803.44
Add—Depreciation			4,456.93
Net Loss			$12,260.37
685			
Net Worth			$88,110.99

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Made up as follows:

Capital Stock:			
Class A—1,000 shares—No Par Value..			$44,000.00
Class B—1,000 shares—No Par Value..			56,676.42
Deficit—December 31, 1937			12,565.43
Net loss for the year ended Dec. 31, 1937		$12,260.37	
Inventory of Supplies—written off		800.00	
Provision for liability on restricted cash act		62.11	
Bad Debts		3,247.82	
Transfer to Capital Stock—Class A		24,000.00	
Transfer to Capital Stock--Class B		51,676.42	
		92,046.72	
Less—Balance, January 1, 1937	$41,134.83		
—Donations from stockholders	37,257.37		
—Adjustments of Accts. Payable....	1,089.09		
		79,481.29	
		$12,565.43	
			$88,110.99

[Filed—November 30, 1944.]

686 **Commission's Exhibit 26**

ESTIMATED COST OF CONVERTING RADIO STATION W-O-R-L BOSTON FROM NON DIRECTIONAL TO DIRECTIONAL CONSISTENT WITH PENDING APPLICATION

10 Acres ground	$ 5,000.00
Transmitter House	3,000.00
Masts	5,400.00
Transmission Line	300.00
Ground System	1,600.00
Moving Transmitter, etc.	2,350.00
Equipment	3,000.00
Total	$20,650.00

[Filed—December 7, 1944.]

691 **Commission's Exhibit 31**

LAW OFFICES
BEN S. FISHER
902 EARLE BUILDING
WASHINGTON, D. C.

Charles V. Wayland
John W. Kendall

March 31, 1937

Mr. John B. Reynolds,
Acting Secretary
Federal Communications Commission
Washington, D. C.

Dear Mr. Reynolds:

There is attached hereto stock reports submitted in behalf of Broadcasting Service Organization, Inc., licensee of Radio Station WORL of Boston, Massachusetts.

These reports show a change in ownership of a minority of the stock of this corporation and it is requested that they be filed with the other stock records of the corporation.

Very truly yours,

(sd) BEN S. FISHER
Ben S. Fisher

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[Filed—January 13, 1945.]

700 **Applicant's Proposed Findings**

Before the

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

File No. B1-R-205
Docket No. 6626

In re application of

BROADCASTING SERVICE ORGANIZATION, INC. (WORL)
BOSTON, MASS.

For Renewal of License of WORL (Main and Auxiliary)

PROPOSED FINDINGS OF FACT AND CONCLUSIONS

I.

PRELIMINARY STATEMENT

1. On May 27, 1944, application form 303 was filed with the Commission by Broadcasting Service Organization, Inc. for renewal of license (main and auxiliary) of standard broadcast station WORL, 950c, 1KW (500 Watts auxiliary) daytime only, Boston, Mass. On June 13, 1944, the Commission designated this renewal application for hearing on the following six issues:

> "Issue No. 1. To determine who are the present owners of the stock of the applicant corporation, and when and from whom said stock was acquired.

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"Issue No. 2. To determine whether the license granted to the applicant corporation, or the rights or responsibilities incident thereto, have been in any manner, either directly or indirectly, transferred, assigned, or disposed of without the consent of the Commission, as provided by the Communications Act of 1934, as amended, and particularly Section 310(b) thereof.

"Issue No. 3. To determine whether the statements and representations made in the various applications, documents, and reports filed with the Commission on behalf of the applicant, by its officers, directors, and/or agents, have fully and accurately reflected the facts concerning the ownership and distribution of the stock of the company.

"Issue No. 4. To determine whether the applicant's officers, directors, stockholders, and/or agents, or either of them, have made false statements and representations to the Commission as to the ownership, transfer, and/or control of the stock of the applicant.

701 "Issue No. 5. To determine whether all contracts and agreements which have been entered into by applicant's officers, directors, stockholders and/or agents, relative to the sale and transfer of the stock of the applicant corporation, have been reported to the Commission as required by Section 43.1 of the Rules and Regulations.

"Issue No. 6. To determine whether in view of the facts adduced under the foregoing issues, public interest, convenience, or necessity would be served by granting the instant application."

2. A full hearing was held on these issues on September 22 and 23, October 18 and December 5, 1944, in Washington, D. C., and on November 20, 1944, in New York, New York. The transcript of the hearing was filed with the Commission and the hearing record closed on December 14, 1944.

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II.

Proposed Findings of Fact.

3. Harold A. Lafount, following his service as Federal Radio Commissioner from 1927 to 1934, has been employed as General Manager of the broadcast station interests of Mr. Arde Bulova, Chairman of the Board of the Bulova Watch Company (T. 4, 5, 457). As General Manager of the Bulova radio interests, Mr. Lafount has had charge and personally supervised the acquisition and construction of the following broadcast stations in which Mr. Bulova had a controlling interest—WNEW and WOV, New York, N. Y., WELI, New Haven, Conn., WNBC, Hartford, Conn., WCOP, Boston, Mass., and WPEN, Philadelphia, Penna. (T. 6, 7). Mr. Bulova has now sold all of his radio interests except Station WNEW in which he still retains controlling interest (T. 456, 457). In 1937, however, Mr. Lafount was handling about $2,000,000 in radio investments for Mr. Bulova (T. 14, 466).

4. Sanford Cohen and George Cohen brothers, who are associated together in the practice of law in New York City, have been intimate friends of Mr. Arde Bulova
702 for twenty-seven years (T. 286) and are the personal attorneys for Mr. Bulova as well as the attorneys for the Bulova Watch Company (T. 10, 90, 287). The Cohen brothers have served as the Bulova legal counsel for about twenty-five years (T. 458). Their professional relationships with Mr. Bulova have been very close to the extent of maintaining their offices with him (T. 287). The Cohens and Harold Lafount, through their mutual association with Bulova, have known each other and been closely associated on radio matters for the past ten years (T. 288).

5. Since the inception of their association, Harold Lafount and Arde Bulova have maintained a running ac-

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count with Lafount sometimes owing Bulova several thousand dollars, and Bulova sometimes owing Lafount equally large sums (T. 13, 14). Between 1937 and 1943 this running account involved a total of several hundred thousand dollars (T. 438). Mr. Lafount used the running account to purchase numerous radio station properties for Mr. Bulova, necessarily involving large sums of money (T. 98). Arde Bulova would sometimes owe Lafount as high as $30,000 on the account (T. 470). He would occasionally borrow as much as $1,000 or $1,500 at a time from Lafount for business or personal uses (T. 490). Mr. Bulova also has maintained a running account for many years with George and Sanford Cohen in which funds are exchanged regularly (T. 287). This account normally involves a number of thousand dollars each year (T. 494). The Cohens often make disbursements in this account for Mr. Bulova as his attorneys (T. 288). Sanford Cohen has power of attorney to conduct his business affairs in his absence (T. 330).

6. In July, 1936, the corporate charter of Broadcasting Service Organization, Inc., licensee of Station WORL, 950kc, 1KW, daytime only, Boston, Mass., was amended to provide that there should be 1,000 shares of A (preferred stock and 1,000 shares of B (common voting)
703 stock and to provide that the Class A stock was entitled to $5 per share annual cumulative dividends and in the event of liquidation or dissolution was entitled to $100 a share, together with accrued dividends (T. 51). Also, during July, 1936, Mr. Robert C. Nordblom acquired 500 shares of the corporation's B stock and became President and Director of the corporation (T. 509). Prior to July 29, 1936, the 1,000 shares of Class B voting stock were distributed as follows:

George A. Crockwell	400 Shares	
William H. Eynon	300 "	
James K. Phelan	300 "	(T. 521).

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Each of these stockholders sold a pro rata share of his B stock to Nordblom so that Nordblom could acquire 500 shares or a 50% interest in the Class B stock on July 29, 1936 (T. 521). Although the licensee reported to the Commission early in August, 1936, that Nordblom had purchased a 50% interest in the Class B voting stock and that Crockwell, Eynon and Phelan, who formerly held all the B stock, had relinquished a pro rata share thereof, the Commission did not require that an application be filed for transfer of control of the corporation to Nordblom (T. 37). As of January 20, 1937, the stock of Broadcasting Service Organization, Inc. was distributed as follows (T. 52, 53):

	A	*B*
George A. Crockwell ..	400 Shares	200 Shares
James K. Phelan	300 "	150 "
William H. Eynon	300 "	149 "
George L. White	——	1 "
Robert C. Nordblom ..	——	500 "

7. Because Station WORL was constantly losing considerable money, Robert C. Nordblom after a few months decided to dispose of his B stock (T. 510). About March 1, 1937, George A. Crockwell telephoned Harold A. Lafount in reference to the possible sale of WORL (T. 8, 49).

About this time a luncheon was held with Harold
704 Lafount in Boston, at which the possible sale to Lafount of stock in the corporation was discussed (T. 513). As soon as he learned of the possibility of buying stock of WORL, Harold Lafount told Arde Bulova about the matter but Bulova stated that he was not interested in himself acquiring the station although he would have no objection to Harold Lafount and the Cohens acquiring it (T. 55, 289). Bulova stated that he was not interested in purchasing WORL because he already owned a Boston outlet, Station WCOP, and because WORL was not a full

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time station (T. 462). He stated, however, that even though Mr. Lafount and the Cohens were in his employ, he had no objection to their buying an interest in WORL, a Boston station competing with WCOP (T. 463). When Harold Lafount, early in March, 1937, told the Cohens about the possibility of their acquiring some of the shares of Class B stock of the corporation, the Cohens authorized Lafount to purchase 300 shares of the B stock for $4,500 for them, if he were able (T. 10, 55, 90, 314, 289, 362).

8. On March 16, 1937, Crockwell, Nordblom, Phelan and Eynon signed an agreement, to which Harold Lafount was not a party, in which Phelan and Eynon each agreed to sell Crockwell 150 shares of B stock and 300 shares of A stock for a total consideration of $2,500 apiece. In the same agreement, Crockwell and Nordblom agreed on the distribution among themselves of the balance of $52,500 to be received for the sale of 700 shares of B stock, after payment of $2,500 apiece to Phelan and Eynon and payment of all the debts of the corporation in a ratio of 62½% and 37½% respectively (T. 63, 80, 514). On the same day, March 16, 1937, Lafount, Crockwell and Nordblom signed an agreement that Crockwell and Nordblom would transfer to Lafount 400 shares of Class B stock for $48,000 and pay all of the debts of the corporation as of March 25, 1937, with a few exceptions, out of the proceeds of the sale.

705 The agreement also provided that the A stock would be altered so that the yearly dividends would be reduced to $2.20 per share; that the dividends would be cumulative only if earned; that the A stock's liquidating value would be only $44 a share; and that after payments of the yearly dividends on A stock of $2.20 and B stock of $6.00, 50% of the remaining net yearly earnings would be used to retire the A stock (T. 69, 70, 516). When this agreement was signed, Harold Lafount also had an understanding that all of the debts of the corporation would be paid and if any other debts later showed up, they would be

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paid by the then stockholders; that Harold Lafount would be made President of the corporation; that employment contracts then in existence for Eynon, Phelan and Crockwell would be canceled; and that the station lease would be paid up one year in advance (T. 57, 58, 61). The 400 shares of B stock thereafter purchased by Lafount on March 25, 1937, were thus obtained as follows:

150 Shares from Eynon
150 " " Phelan
100 " " Nordblom (T. 10).

9. On March 25, 1937, Harold Lafount, Crockwell, Nordblom and Robert H. Davison, a Boston attorney, signed an escrow agreement providing that Lafount was to pay Davison as escrow agent $48,000, out of which Davison was to pay all of the debts of the Broadcasting Service Organization, Inc., with a few exceptions, and then deliver the balance of the $48,000 to Crockwell and Nordblom in a 62½%-37½% ratio and deliver the 400 shares of B stock, endorsed in blank, to Harold Lafount (T. 89). The escrow agreement also provided that the resignation of the officers and directors of the corporation should be placed in escrow and that new officers and directors be elected in accordance with the by-laws (T. 88).

10. The purchase by Sanford and George Cohen of 300 shares of B stock was negotiated separately from
706 Harold Lafount's purchase of 400 shares of B stock and was a separate contract and an entirely separate deal (T. 60, 78, 80, 81, 142). On March 25, 1937, Ben S. Fisher, attorney, as agent for the Cohens, signed a contract with Robert C. Nordblom to purchase 300 shares of B stock from Nordblom for $4,500 (T. 107). On that day, Harold Lafount and Ben Fisher were elected Directors of the corporation. Harold Lafount was elected President of the corporation and Helen Rose, secretary to the Cohens, was elected Treasurer of the corporation (T. 109).

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11. The total sum paid for 700 shares of B stock sold on March 25, 1937, was $52,500, Harold Lafount paying $48,000 for his 400 shares of B stock and the Cohens paying $4,500 for their 300 shares. However, the purchasers did agree between them to divide the cost of the 700 shares on a per share basis to equalize the purchase price (T. 11, 186, 311). The $52,500 purchase price was paid to Crockwell through Robert H. Davison, the Boston attorney for both Lafount and Nordblom, and was in the form of a cashier's check made to and endorsed by Harold Lafount (T. 12, 13, 15, 39, 89, 464). Although the Cohens' 300 shares were transferred at the same time as Lafount's 400 shares, and were paid for from the same certified check, the Cohens' purchase was a separate deal and a separate contract from that of Lafount (T. 89, 213). Arde Bulova loaned Harold Lafount and the Cohens the $52,500 for the purchase of the 700 shares at their request and considered it a personal loan to financially responsible friends and business associates in whom he had the greatest confidence (T. 467, 495). The money which he loaned to purchase these 700 shares was not considered by him a loan to the station and was not supported by a note or other obligation on the station (T. 40, 183, 466). Bulova's advance of funds for the purchase of the shares was handled as a loan on his
707 running accounts with Lafount and the Cohens without any security (T. 91). Bulova did not require anything more than the oral agreement of Lafount and the Cohens to repay him the funds he loaned (T. 454).

12. Since Arde Bulova was indebted to Harold Lafount for approximately $12,400 on their running account, Mr. Lafount and the Cohens together became indebted to Bulova for approximately $40,000 when Bulova put up the $52,500 for their acquisition of 700 shares of B stock (T. 14, 466). Because $38,000 out of the $48,000 which Harold Lafount paid for his 400 shares of B stock was used to pay off the existing debts of the corporation, the Cohens

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agreed with Lafount when the 700 shares were purchased March 25, 1937, that they would repay Bulova $22,500 of the $52,500 total purchase price, leaving the actual cost of Lafount's 400 shares $30,000 (T. 12, 79, 186, 289, 311). However, when Lafount subsequently obtained A (preferred) stock of the corporation for $5,950, which had a value on the books of the corporation of $44,900, an adjustment was made between Lafount and the Cohens so that Lafount would not have a tremendous advantage over the Cohens by his acquisition of the A stock (T. 30). Under this adjustment, the amount the Cohens were to repay Bulova for their B stock was reduced from $22,500 to $7,900 (T. 189, 271). In turn, the net cost to Lafount of his 400 shares became $40,000 (T. 161).

13. Since Bulova had loaned the $52,500 to Lafount and the Cohens on their respective running accounts, both repaid Bulova separately and directly (T. 30). There was no single report kept of the running account between Lafount and Bulova—it was reflected in the books of the various Bulova broadcast corporations (T. 97). Deducting from the $52,500 advance by Bulova the $7,900 the Cohens owed Bulova for their 300 shares following the adjustment with Lafount and the $12,400 which Bulova was indebted to Lafount on their running account,
708 the net actually borrowed by Lafount was $32,200 (T. 100). In 1938 Lafount repaid Bulova approximately $7,500 through his personal purchase of some land for the Sanfont Realty Company owned by Bulova (T. 431). In addition, in the years from 1937 to 1943 Lafount made several advances to Bulova totaling over $6,500 (T. 436). Finally in December, 1943, Lafount gave Bulova $20,000 thus overpaying his running account in excess of $1,800 (T. 98-105, 190, 431, 436). This overpayment of the running account finally paid off all indebtedness which Lafount owed for the money Bulova advanced him to acquire his

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400 shares of B stock (T. 31, 39, 444, 447). The Cohens repaid Bulova their part of the funds he advanced for their acquisition of the 300 shares in installments and cash advances beginning in 1937 and ending in August, 1941, when a final cash payment of $5,000 was made to Bulova (T. 298, 330, 452).

14. When Lafount purchased the 400 shares of B stock on March 25, 1937, he did not acquire nor did he intend to acquire a majority interest in the corporation (T. 54, 140, 145). Arde Bulova has never owned any stock in the corporation (T. 430). Neither did Harold Lafount at any time represent to anyone that he was buying an interest in the corporation for Arde Bulova (T. 58). When he purchased the 400 shares, Lafount insisted that new officers and directors be elected and the preferred stock be reduced in value because although only acquiring a minority interest, he was paying off all the debts of a virtually bankrupt corporation (T. 146). When the negotiations for the sale of the 700 shares of B stock were underway in March, 1937, Arde Bulova's name was never mentioned to the sellers of the stock as a party in interest in the sale (T. 537). However, Lafount did tell Nordblom that Sanford Cohen was interested in part of the B stock to be acquired (T. 520, 525) and the Cohens' names were
709 again mentioned to the sellers at the closing on March 25, 1937, as prospective owners of the 300 shares of B stock purchased from Nordblom (T. 537).

15. Lafount's acquisition of 400 shares of Class B stock of the corporation on March 25, 1937, was reported to the Commission on March 31, 1937 (T. 15, 39, 236, 538). On the closing date of March 25, 1937, temporary certificates were issued, one to Harold Lafount for 400 shares and one to Robert Nordblom for 300 shares which was endorsed by him and delivered to Harold Lafount. The temporary certifi-

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cate for 300 shares was made out at that time in Nordblom's name rather than the name of the Cohens, who had purchased the shares, because Lafount did not know at that time how the Cohens wanted their 300 shares apportioned between them (T. 122, 126). About a month later on April 23, 1937, a permanent certificate for 400 shares of B stock was issued and mailed to Harold Lafount and another certificate for 300 shares of stock was issued the same day in the name of Robert Nordblom but endorsed in blank and mailed to Harold Lafount. On the same day, another certificate for 100 shares of B stock was issued to Robert Nordblom and a certificate for 200 shares was issued to Crockwell, making a total of 1,000 shares issued (T. 115).

16. The 300 shares of B stock which Ben Fisher, as agent, purchased for the Cohens on March 25, 1937, were put in Nordblom's rather than Cohen's name on the permanent certificate issued April 23, 1937, and were not reported to the Commission as being owned by the Cohens because in the month intervening between the closing date and the issuance of the permanent certificates, Crockwell and Nordblom had expressed dissatisfaction over the sale of their stock and Nordblom agreed to remain the nominal owner of the stock until the pending dissatis-
faction, which arose almost immediately after the
710 closing date, had been cleared up (T. 117, 118).

The permanent stock certificate for 300 shares, endorsed in blank by Nordblom, was turned over to Mr. Sanford Cohen by Harold Lafount immediately upon its receipt in April, 1937, and remained in the Cohens' possession thereafter (T. 16, 290, 362). The certificate remained in the Cohens' safety deposit box from April, 1937, on (T. 144, 279). Shortly after the closing date, Crockwell complained to Harold Lafount and stated that he was not satisfied and wanted to buy the station back; also, he told Lafount Nordblom's deal was not satisfactory to

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Nordblom and something had to be done about it (T. 16, 138, 192). Crockwell frequently expressed dissatisfaction to Nordblom over deal (T. 532, 523), and at Directors' meetings from 1937 to 1943 there was frequent mention of the Crockwell and Whitwell complaints (T. 534). The Cohens being lawyers and being cautious about any possible claims against the stock they had purchased, did not want the certificates for the 300 shares to be issued in their names until all dissatisfaction had been ironed out and no further claims against the stock were outstanding (T. 22, 127, 144, 174, 219, 290, 321).

17. During the two year period following the closing date, Crockwell repeatedly told Lafount that Nordblom was dissatisfied with the payment which the Cohens had made to him for their 300 shares of B stock (T. 17, 139, 213, 226). Moreover, early in 1939 Robert Davison, the Boston attorney, told Lafount that a Miss Natalie Whitwell claimed to own all of the stock of Broadcasting Service Organization, Inc. (T. 281). Early in 1939 Crockwell also advised Lafount of Miss Whitwell's claim on the stock (T. 18, 220). Miss Whitwell's attorney asserted claims on her behalf to all of the A and B stock (T. 338). On July 28, 1941, J. A. Hines, counsel for Miss Whitwell, wrote Lafount demanding that all the outstanding stock of the corporation be turned over to his client (App.
711 Ex. 8). As late as December 15, 1943, Hines, in testimony before a Congressional Committee, asserted claims against the corporation on behalf of Miss Whitwell (T. 326). Miss Whitwell brought suit in the Massachusetts courts against Broadcasting Service Organization, Inc. (T. 18, 221, 292). However, the court ultimately held in favor of the defendants (T. 324, 525). The pendency of the Whitwell claim was an additional reason why the Cohens did not want the 300 shares issued in their names (T. 338, 363).

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18. Upon the request of Harold Lafount, Nordblom consented to continuing to hold nominal title to the 300 shares of B stock sold to the Cohens and agreed to stay on the Board of Directors of the corporation until pending differences were adjusted (T. 19, 518). Thus the B stock continued to be owned of record, 400 shares by Lafount, 400 by Nordblom and 200 by Crockwell (T. 20). Harold Lafount at that time believed that in view of the circumstances and uncertainty of the final transfer of 300 shares of B stock to the Cohens, it was unnecessary under Section 310(b) of the Act to either report the transfer of the 300 shares which had not been finally consummated or to file an application for transfer of control of the corporation (T. 140, 142). On March 25, 1937, Harold Lafount, Ben Fisher and Nordblom were elected as Directors; and on April 29, 1937, Robert Davison replaced Ben Fisher as a Director (T. 148). On August 24, 1938, George Cohen succeeded Helen Rose as Treasurer of the corporation (T. 149).

19. Robert Nordblom continued to vote the 300 shares of B stock even after it had been sold to the Cohens (T. 147, 519). Nordblom appeared at the following stockholders and Directors' meetings and voted 400 shares of B stock:

3/25/37
4/29/37
1/19/38
3/ 3/38
8/24/38
1/18/39
2/11/39
1/22/40
3/18/41
4/ 6/43 (T. 148-150, 526).

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712 Nordblom continued to take an active interest in the corporation until the spring of 1943 (T. 528). However, on March 18, 1941, Sanford Cohen replaced him as a Director of the corporation (T. 152). He remained a Director until that time for business reasons and because of dissatisfaction with the sale price of his stock (T. 535-8).

20. In the judgment of Sanford Cohen, Nordblom's sale of 300 shares of B stock to the Cohens in March, 1937, did not necessitate making application for transfer of control of the corporation (T. 327). Likewise, in the judgment of Sanford Cohen, it was not necessary to inform the Commission that Bulova had loaned the Cohens and Harold Lafount $52,500 for the purchase of the 700 shares of B stock, since the loan was without security and the B stock was not in any way encumbered by virtue of the loan (T. 328). Sanford Cohen did not want the 300 shares transferred to himself and his brother not only because of the Nordblom, Crockwell and Whitwell claims, but also because there was a suit against the corporation pending by one Proctor for several hundred dollars and also another suit by a former employee of the station for a couple hundred dollars in unpaid salary (T. 337). Sanford Cohen never voted the 300 shares of B stock or attended stockholders' meetings until a final settlement had been made with Nordblom in the fall of 1943 (T. 340). The 300 shares of B stock continued to be owned of record by Nordblom until a final settlement of $750 additional was paid him in November, 1943, in final adjustment of all of Nordblom's claims (T. 20, 205, 364). By this time the Whitwell and the other claims had also been cleared up; and on November 27, 1943, the stock in Nordblom's name was thereupon transferred, 200 shares to Sanford Cohen and 100 shares to George Cohen (T. 178) and a report of this transfer was filed with the Commission on December 1, 1943 (T. 22, 37, 269).

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713 21. The March 31, 1937, report to the Commission showed 400 shares of B stock transferred to Harold Lafount for $30,000 on March 25, 1937, and 600 shares of A stock transferred to Crockwell for $26,400 on the same date (T. 130). The reason $30,000 was reported to the Commission as the cost of the 400 shares of B stock transferred to Harold Lafount when he actually paid $48,000 for the shares, was that $30,000 was his net cost for the shares in view of the agreement of the Cohens to repay him one-half of the then indebtedness of the station which had been paid off from his $48,000 purchase price (T. 131).

22. At Harold Lafount's request, Bulova loaned Crockwell $5,000 on July 12, 1937, on a six months note underwritten by Lafount and secured by the remaining 200 shares of B stock owned by Crockwell; and when Crockwell was unable to pay the note on the due date, Bulova on July 28, 1938, foreclosed on the security and bought the 200 shares for Sanford Cohen at auction for $100 (T. 255-6). Bulova's foreclosure in his own name occurred during the absence of Sanford Cohen and was the result of a mistaken understanding of certain legal requirements (T. 255). Immediately upon Sanford Cohen's return, on September 30, 1938, Bulova assigned this stock to him for the auction price of $100 plus reimbursement of the $5,000 Bulova had loaned Crockwell (T. 23, 167, 255, 259, 294, 474, 497). Although Harold Lafount put up the $100 to buy this stock at auction for Bulova, Sanford Cohen repaid Lafount the $100 beside making Bulova hold for the $5,000 he had loaned Crockwell (T. 168, 497). This transfer of 200 shares of B stock to Sanford Cohen was reported to the Commission November 27, 1938 (T. 24, 256). Although in this report to the Commission, Harold Lafount was shown as the owner of 400 shares of voting stock, Sanford Cohen the owner of 200 shares and Robert Nordblom the owner of the remaining

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400 shares, thus indicating that Lafount and Cohen
714 together owned 60% of the voting stock, the Commission did not require that an application for transfer of control of the corporation be filed (T. 37, 260, 295, 327).

23. In March, 1930, on the advice of Robert Davison, Lafount bought at auction for $2,450 nine hundred shares of the Class A preferred stock owned by Crockwell which the latter had posted as collateral for a $2,400 loan then overdue and being foreclosed (T. 26, 112). Since these 900 shares of Class A stock have a face value of $44 per share on the corporate books, or a total value of $44,000, Lafount agreed with the Cohens upon acquiring the A stock that an adjustment should be made with the Cohens and the amount which they were to pay for their 400 shares of B stock was reduced from $22,500 to $7,900 as a result (T. 29, 30). Lafount's acquisition of these 900 shares of A stock was not reported to the Commission until about a year after he acquired them through oversight (T. 27). He was under the impression that this acquisition had been reported to the Commission immediately but later found that it had not (T. 266).

24. In September, 1940, Lafount purchased the remaining 100 shares of Class A stock from Lester Endlar for $3,100 (T. 28, 114). This purchase was not reported to the Commission until April, 1941, again through oversight (T. 29). Lafount thought that this had been reported at once but later discovered it had not (T. 261). The present ownership of all the Class A stock by Harold Lafount has been a matter of record with the Commission since April, 1941 (T. 37). Lafount paid a total of $5,950 for his 1,000 shares of A stock—$2,450 for 900 shares purchased from Crockwell and $3,100 for the 100 shares purchased from Endlar plus $400 legal fees in connection with the Endlar purchase (T. 29). The latter purchase was reported to the

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Commission at $3,500 because that was the actual cost including fees (T. 262).

715 25. On September 27, 1940, besides purchasing Endlar's remaining 100 shares of A stock for $3,100, Lafount also purchased Nordblom's remaining 100 shares of B stock for $1,500 (T. 171). This stock was acquired because it appeared that there was a possibility of selling the corporation to new interests and it was necessary to have possession of all the outstanding stock (T. 170). These remaining 100 shares of B stock were purchased from Nordblom for George Cohen at the latter's request (T. 370). Sanford Cohen repaid Lafount the $1,500 he had paid Nordblom for the shares almost immediately (T. 176) and Lafount turned this money over to Bulova in partial repayment of the money he still owed (Bulova (T. 179). On November 9, 1943, the last 100 shares were issued in the name of George Cohen (T. 25, 178). This was reported to the Commission November 15, 1943 (T. 267).

26. The reason the acquisition of the last 100 shares of B stock by Lafount from Nordblom in 1940 and the transfer of that stock from Lafount to George Cohen was not reported to the Commission until November 15, 1943, was because Nordblom also expressed dissatisfaction with the deal he got on the sale of his last 100 shares and the Cohens again did not want stock of record in their names until all complaints were settled (T. 295). Nordblom expressed dissatisfaction to Lafount over only obtaining $1,500 on the sale of his last 100 shares of B stock because he had understood that the station was to be sold for $75,000 and it had not been so disposed of (T. 128, 175, 194, 199). Finally on November 24, 1943, after consultation with Sanford Cohen, Lafount paid Nordblom $750 additional (T. 214). For this sum Nordblom released all claims arising not only from the purchase of 100 shares of his B stock in

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September, 1940, but all other claims arising out of the purchase of his other stock sale (T. 21, 205, 364). This
716 $750 additional payment by Lafount was repaid him in December, 1943, or January, 1944, by Sanford Cohen (T. 214).

27. The present stock ownership in the corporation is as follows:

	Class A Stock	*Class B Stock*
Harold A. Lafount	1,000 Shares	400 Shares
Sanford Cohen	—	400 "
George Cohen	—	200 "

(T. 25, 299).

The present Directors of the corporation are Harold A. Lafount, Robert Davison and Sanford Cohen (T. 300). George Cohen is Treasurer of the corporation (T. 300). Harold A. Lafount has been President of the corporation since the acquisition of his 400 shares of B stock in 1937 and has received a total of $40,000 in salary from the corporation since 1937 (T. 225). George Cohen has never received a salary from the corporation (T. 373).

28. It is the opinion of Harold Lafount that control of a broadcast corporation, within the meaning of the Communications Act, involves possession of more than 50% of the outstanding voting stock by one individual and that acquisition of a majority of the voting stock by several individuals, none of whom has a majority individually, does not constitute control of the corporation (T. 216, 217). Also, in Lafount's judgment the fact that he held a stock certificate for 300 shares of B stock for the Cohens endorsed in blank, did not transfer the ownership of the shares represented by that certificate to the Cohens (T. 217) nor effect

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a transfer of control of the corporation (T. 245). Harold Lafount at no time voted the 300 shares of B stock which the Cohens purchased from Nordblom, except by proxy from the Cohens (T. 229). Any testimony which Lafount may have given before the Select Committee of the House of Representatives investigating the Federal Communications Commission to the effect that he owned a controlling interest in WORL or exercised control of the station was
717 mistaken and a result of an imperfect recollection and a misunderstanding that the Committee referred to his negotiations for the purchase of 700 shares of B stock on his own and the Cohens' behalf, rather than that they were discussing his personal ownership of the 700 shares (T. 233). The original mistake in testimony before the Select Committee was corrected by Lafount within a week (T. 233, 276).

29. When Broadcasting Service Organization, Inc. submitted a balance sheet as of April 30, 1937, showing $25,000 cash in bank, this balance sheet was submitted as part of the licensee's application for full time operation of WORL with a directional antenna and was intended merely as a *proposed* balance sheet if full time operation were approved (T. 399). Although the $25,000 in cash was not actually in the bank in the name of the corporation, it would have been put up by Lafount if the full time application had been approved by the Commission (T. 454). When Harold Lafount testified before the Commission in Docket 4206 that $25,000 cash was "available" to finance full time operation of WORL, he meant simply that arrangements had been made with Mr. Cohen to obtain the necessary cash (T. 542). The cash was in fact in the bank although not to the credit of the license corporation (T. 543). Mr. Lafount did not intend to infer either by the application or his testimony at the hearing that the cash stood to the actual credit of the corporation (T. 544).

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30. When Mr. Lafount became President of Broadcasting Service Organization, Inc. in 1937, the corporation was in very bad shape financially as shown by the fact that $38,000 of the $48,000 Lafount paid for his original 400 shares of B stock were required to pay off existing station debts (T. 31, 32). The station as a whole,
718 including programming, equipment and accounts receivable, was in a very bad condition (T. 32). As soon as Lafount became President he put in a new station manager and subsequently in 1940, hired George Lasker as station manager (T. 32, 156). Ever since he became President he has been in very close touch with the station and in constant contact with its manager (T. 156). Since 1937 he has loaned the corporation $25,000 to $30,000, which has all been repaid (T. 163). The station's financial condition has improved steadily since 1937 and has become a paying proposition (T. 543). In 1938 the station showed a loss of $11,424 and total receipts of $54,754 (T. 35). Every year since 1938, the station has showed a net profit before taxes (T. 35). The corporation has not had to borrow any money since 1939 (T. 164). The yearly net profit and the yearly receipts from 1939 through 1943 are as follows:

	Profit	*Receipts*	
1939	$ 1,163	$ 83,866	
1940	23,800	165,855	
1941	39,088	197,224	
1942	35,065	209,557	
1943	25,101	240,468	(T. 35)

The balance sheet of Broadcasting Service Organization, Inc. as of December 31, 1943, shows assets of $114,938.35 and liabilities of $20,584.73, making a net worth of $94,-353.62 (T. 34). No dividends have been paid by the corporation since 1937—all the profits have been spent in improvements for the station or invested in it (T. 165).

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31. George Lasker, who formerly managed station WPEN in Philadelphia, was hired by Harold Lafount to become manager of WORL in May, 1938 (T. 375). Since Lasker has been the station manager the WORL weekly billings have gradually increased from $904 to $6,200 (T. 378). The station at present serves between 80 and 90 accounts a week including 44 outstanding national accounts such as Dentyne Chewing Gum, American Express, Palmolive Soap and the Saturday Evening Post (T. 379).
719 Moreover, in the last three years the WORL Hooper rating has progressively risen as follows (T. 380):

	Morning	*Afternoon*
1941	8.4%	9.4%
1942	12.3%	10.0%
1943	14.2%	12.3%

32. Mr. Lasker has put showmanship into broadcasting in the Boston area and among others has built the "920 Club" program on WORL, which according to the Hooper rating puts WORL in a tie for first place during the daytime among Boston listeners (T. 376). The station regularly donates free broadcast time to at least 70 outstanding national and local organizations such as the American Red Cross and the American Legion for public service programs (T. 377). Regular time is also donated to numerous government agencies such as the Bureau of Internal Revenue and Civil Air Patrol (T. 377). Since the start of the war, WORL has featured patriotic station breaks every half an hour such as "Back The Attack" and "Win The War In 1944" (T. 384).

33. The past five years WORL has presented outstanding weekly public service programs featuring two Boston policemen in the interest of traffic safety in the Boston area (T. 381). The station also now features a weekly Coast Guard show done from the Boston Common Park with

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celebrities such as the Mayor of Boston and the Governor of Massachusetts as special guests (T. 383). Other weekly programs featured on the station are an American Red Cross program presented three times a week; the Institute for Oral and Visual Education; the American Ideals program; Freedom of the Land sponsored by the United States Department of Agriculture every Sunday; the Marine Corps Musical; the Voice of the Army; and a Navy Recruiting Program called "Something for the Girls" (T. 384). Because of its oustanding public service programs, the station is the recipient of the McNinch Award for public service (T. 384).

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III.

Conclusions.

34. The President of Broadcasting Service Organization, Inc. is Harold A. Lafount and the Treasurer is Sanford Cohen. The Directors are Mr. Lafount, Mr. Cohen and Robert Davison. Harold A. Lafount is the present owner of all of the Class A stock of Broadcasting Service Organization, Inc. and also owns 400 shares of the Class B voting stock of the corporation. 900 of his 1,000 shares of A stock were purchased at auction from George A. Crockwell for $2,450 in March, 1939. The remaining 100 shares of A stock were purchased from Lester Endlar for $3,100 in September, 1940. His 400 shares of B stock were purchased March 25, 1937, from Crockwell and Nordblom at a sale price of $48,000 but at an actual net cost to himself of $40,000. The remaining 600 shares of B stock are held, 400 shares by Sanford Cohen and 200 shares by George Cohen. 200 shares of the B stock held by Sanford Cohen and 100 shares held by George Cohen were purchased from Robert Nordblom on March 25, 1937, at a sale price of $4,500 but at an actual net cost to them of $7,900. The

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other 200 shares of B stock held by Sanford Cohen were assigned to him on September 30, 1938 for $5,100 by Arde Bulova almost immediately after Bulova had foreclosed on a note for $5,000 he had advanced Crockwell, with Crockwell's remaining 200 shares of B stock as security. George Cohen's other 100 shares of B stock were purchased for him by Harold Lafount from Robert Nordblom for $1,500 on September 27, 1940, and transferred of record to George Cohen on November 9, 1943.

35. Arde Bulova has never owned any of the stock of Broadcasting Service Organization, Inc. He specifically declined an opportunity to purchase some of the B stock in 1937 because he already owned Station WCOP in Boston and because WORL was not a full time outlet. His
721 advance of $52,500 to Lafount and the Cohens for their acquisition of this original 700 shares of the B stock in March, 1937, was a personal loan without security to trusted and intimate business associates and was not secured by any written agreements to repay, or by stock of Broadcasting Service Organization, Inc. Bulova has been repaid in full for the $52,500 he advanced the Cohens and Lafount. Harold Lafount has never owned more than his present 400 out of the total of 1,000 shares of the voting stock of the corporation and has never personally exercised voting control of the corporation. Since 1937 he has been in charge of the actual operation of WORL but this has been in his capacity as President of the corporation responsive to the Board of Directors rather than as a controlling stockholder of the corporation.

36. It has been and is the honest judgment of the present stockholders of Broadcasting Service Organization, Inc. that no stock transactions have occurred in the corporation since their first association with the station in March, 1937, which constitute a transfer of control of the corporation and require Commission consent to such transfer of con-

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trol within the meaning of Section 310(b) of the Communications Act of 1934 as amended. The stockholders believe that control of a broadcast corporation, within the meaning of the Act, involves possession of more than 50% of the outstanding voting stock by one individual and that acquisition of a majority of the voting stock by several individuals, none of whom has a majority individually, does not constitute control. The Commission itself has accepted this interpretation of the Act in relation to changes in stock ownership of Broadcasting Service Organization, Inc. both before and after the acquisition of the 700 shares of voting stock by Lafount and the Cohens in March, 1937. First,

in August, 1936, the Commission did not require that
722 an application be filed under Section 310(b) of the

Act for transfer of control of the corporation, although on that date it was reported that Robert C. Nordblom, who previously held no stock, had purchased a 50% interest in the Class B voting stock and that the three stockholders who formerly had held all the B stock had each relinquished a pro rata share to Nordblom. Again the Commission did not require an application for transfer of control under 310(b) to be filed when on November 22, 1938, it was reported that Sanford Cohen had acquired 200 shares of voting stock which, with the 400 shares of voting stock previously reported as being held by Harold Lafount, indicated that Lafount and Cohen together had obtained 60% of the voting stock.

37. The present stock ownership and distribution has been a matter of complete record at the Commission since December 1, 1943. No reports of the status of the stock ownership of the corporation, required under Section 43.1 or other Rules of the Commission, have been intentionally or purposely withheld from the Commission or consciously delayed before filing. If any data on stock holdings has not been reported promptly, it has been either through an error in honest judgment or through inadvertence. The

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acquisition by Harold Lafount of 400 shares of B stock on March 25, 1937, was reported to the Commission within a week—on March 31, 1937. $30,000 was reported as the cost to him of 400 shares because although he actually paid $48,000 for these shares, $30,000 was what he then thought would be the net cost of the shares in view of the agreement of the Cohens to repay him one-half of the then indebtedness of the station which had been paid out of his $48,000 purchase price. His acquisition of 900 shares of A stock at auction from Crockwell in March, 1939, was not reported to the Commission until about a year later but only because Lafount was under the false impression that his acquisition of this stock had been immediately reported to the Commission. His acquisition in September, 1940, of the remaining 100 shares of A stock from Lester Endlar was not reported to the Commission until April, 1941, but this again was through oversight since Lafount had been under the impression that the purchase of this stock had been reported at once. His acquisition of these 100 shares was reported to the Commission as costing $3,500 because that was the actual cost to him of the 100 shares, including $400 in legal fees.

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38. The sale to the Cohens on March 25, 1937, of 300 shares of B stock for $4,500 was not reported to the Commission by Harold Lafount when he reported the purchase of his own 400 shares of B stock on March 31, 1937, because at that time he did not know how the Cohens wanted the 300 shares apportioned between them. The sale of the 300 shares to the Cohens was not reported to the Commission until December 1, 1943, because the shares were not transferred of record to the Cohens until November 27, 1943, for the reason that almost immediately after the March 25, 1937, closing date Crockwell and Nordblom repeatedly expressed dissatisfaction with the sale of their stock; and the Cohens being lawyers and being very cautious, did not want the stock transferred of record to them

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until all this dissatisfaction had been satisfactorily settled. Further, a suit filed against Broadcasting Service Organization, Inc. by a Miss Natalie Whitwell who claimed to own all the stock of the corporation, and in addition suits in the amount of several hundred dollars were pending against the corporation by one Proctor and also by a former employee of the station. In the face of all this dissatisfaction and these conflicting claims, the Cohens did not deem it advisable to become record stockholders.

The Cohens never voted these 300 shares of B stock
724 while there was any dispute about them. Sanford Cohen, himself a lawyer, did not believe it necessary to report to the Commission their acquisition of the 300 shares until they became the owners of record of these shares. In November, 1943, an additional payment of $750 was made to Nordblom in satisfaction of all his claims; and since all the other suits had been satisfactorily settled, the stock was then transferred, 200 shares to Sanford Cohen and 100 shares to George Cohen, and promptly reported to the Commission. Sanford Cohen's acquisition of 200 additional shares of B stock on September 30, 1938, was reported to the Commission in less than a month—on November 22, 1938. The purchase by Harold Lafount for George Cohen of an additional 100 shares of B stock from Robert Nordblom on September 27, 1940, was transferred of record to George Cohen on November 9, 1943, and reported to the Commission a week later on November 15, 1943. The reason these 100 shares were not transferred of record to George Cohen sooner is that Robert Nordblom had also expressed strong dissatisfaction with the $1,500 price he had been paid for the stock and his claims on this stock, like the claims of himself and Crockwell on the other B stock, were not settled until he received an additional payment of $750 on Novemebr 24, 1943.

39. When Broadcasting Service Organization, Inc. submitted with its application for full time operation a balance

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sheet as of April 30, 1937, showing $25,000 cash in the bank, the balance sheet was intended merely as a *proposed* balance sheet if full time operation were approved. Although the $25,000 cash was not actually in the bank to the credit of the corporation, arrangements had been made to obtain $25,000 cash and it would have been placed to the credit of the corporation if the full time application had been approved. When Harold Lafount testified at the hearing on the application that $25,000 cash was available to finance the full time operation, he meant simply that arrangements had been made with Mr. Cohen to obtain $25,000 in cash, which was in the bank although not to the actual credit of the licensee corporation. He did not intend to infer either by the application or his testimony at the hearing that the cash stood to the actual credit of the corporation. Likewise, when Mr. Lafount gave testimony before the Select Committee of the House of Representatives investigating the FCC, to the effect that he had control of Broadcasting Service Organization, Inc., this testimony was mistaken and was the result of an imperfect recollection and a misunderstanding of the nature of the subject matter of the Committee's inquiry. The mistake in this testimony before the Select Committee was corrected by Lafount within a week.

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40. Since the present stockholders first acquired an interest in the corporation in 1937, the station has been tremendously improved. At that time it had $38,000 in debts and was consistently losing money. As a comparison, in 1938 the station showed a loss of $11,424 and total receipts of $54,754, whereas in 1943 the station showed a net profit of $25,101 and total receipts of $240,468. As a further comparison, the weekly billings of the station have progressively increased from $904 in 1938 to $6,200 as of the present time. No dividends have been paid by the corporation since 1937, all the profits having been spent in improving the station. The balance sheet as of December 31, 1943 shows assets of $114,938 and liabilities

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of $20,584, making a net worth of $94,353. The station at present serves between 80 and 90 accounts a week including 44 outstanding national accounts.

726 41. In addition to the station's finances, its programming and public service have also made great strides forward. The morning Hooper rating rose from 8.4% in 1941 to 14.2% in 1943 and the afternoon Hooper rating rose from 9.4% to 12.3% in the same period. The "920 Club" program on the station, instituted by its present manager, Mr. George Lasker, has put showmanship into broadcasting in the Boston area and according to the Hooper Listener Survey has put WORL in a tie for first place during daytime among Boston listeners. Regular time is devoted free to at least 70 outstanding national and local organizations, in addition to numerous government agencies for public service programs. The best indication of the high quality of the public service programs now being presented on WORL is the fact that the station has recently been awarded the McNinch Award of the broadcasting industry for outstanding public service.

42. In view of the foregoing facts, the public interest, convenience and necessity will be served by grant of the pending application of Broadcasting Service Organization, Inc. for renewal of license of Station WORL.

Respectfully submitted,

BROADCASTING SERVICE ORGANIZATION, INC.

BEN S. FISHER,
CHARLES V. WAYLAND,
JOHN P. SOUTHMAYD,
Its Attorneys

By JOHN P. SOUTHMAYD

Address:
902 Earle Building
Washington 4, D. C.

Dated:
January 13, 1945.

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727 **Proposed Decision**

Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

B-223

Docket No. 6626--File No. B1-R-205

In re Application of

BROADCASTING SERVICE ORGANIZATION, INC. (WORL)
BOSTON, MASSACHUSETTS

For Renewal of License

APPEARANCES

On behalf of the applicant:

Ben S. Fisher and Charles B. Wayland
Washington, D. C.

On behalf of the Commission:

Leonard H. Marks, Peter Shuebruk, and J. Alfred Guest.

PROPOSED DECISION

PRELIMINARY STATEMENT

1. This proceeding arose upon the application of Broadcasting Service Organization, Inc., hereinafter referred to as the applicant or corporation, for renewal of license (Main

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and Auxiliary) to operate Station WORL at Boston, Massachusetts, on 950 kc, with power of 1 kw (500 watts for the Auxiliary), daytime. Hearings were held on September 22 and 23, October 18, November 20, and December 5, 1944, before a presiding officer duly appointed by the Commission to determine whether public interest, convenience and necessity will be served by a grant of the application. The principal issues involved relate to the qualifications and fitness of the applicant and its principals to continue the operation of the station and were:

(a) Whether the license granted to the applicant corporation, or the rights or responsibilities incident thereto, have been in any manner, either directly or indirectly, transferred, assigned, or disposed of without the consent of the Commission, as provided by the Communications Act of 1934, as amended, and particularly Section 310(b) thereof.

(b) Whether all contracts and agreements which have been entered into by the applicant's officers, directors, stockholders and/or agents, relative to the sale and transfer of the stock of the applicant corporation, have been reported to the Commission as required by its Rules and Regulations.

(c) Whether the statements and representations made in the various applications, documents, and reports required of and filed with the Commission
728 on behalf of the applicant by its officers, directors, and/or agents, have fully and accurately reflected the facts concerning the ownership and distribution of the stock of the company.

(d) Whether the applicant's officers, directors, stockholders, and/or agents, or any of them, have made false statements and representations to the Commission as to ownership, transfer, and/or control of the stock of the applicant.

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FINDINGS OF FACT

2. The applicant, a Massachusetts Corporation, is the licensee of Station WORL, Boston, Massachusetts. Its authorized capital stock, all of which is outstanding, consists of 1000 shares of nonvoting Class A preferred and 1000 shares of voting common designated as Class B. Its officers, directors and stockholders as of the date of hearing were and still are:

Name	*Office*	*A Stock*	*B Stock (Voting)*
Harold A. Lafount	Director—President	1000—100%	400—40%
Sanford H. Cohen	Director	—	400—40%
George Cohen	Treasurer	—	200—20%
Robert H. Davison	Director—Clerk (Secretary)—		—

3. Sanford H. Cohen and his brother, George, have been practicing law since 1911 and have been law partners since 1920. Sanford H. Cohen was admitted to practice before this Commission about 1940. Both have had considerable experience in corporate law and for 15 years have represented the Bulova Watch Company and its principal stockholder, Arde Bulova. For years Sanford Cohen has had power of attorney from Bulova to sign checks and also entrusted at times with the management of Mr. Bulova's investments in radio, amounting to approximately $2,000,000. The Cohens have also been Bulova's general counsel in connection with his acquisition of radio stations, which have included Stations WCOP, WPEN, WNBC, WOV, WELI and WNEW.

Harold A. Lafount has been a successful business man. From 1927 to 1934, he was a member of the Federal Radio

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Commission. From 1934 on, he has been in charge of all of Bulova's radio interests and has supervised the investment of about $2,000,000 in radio stations. Even prior to his connection with Bulova, he had investments in his own right of over $1,500,000.

Robert H. Davison is an attorney at law with offices in Boston. He has been the applicant's local counsel, director and clerk since these stockholders first acquired an interest therein.

Transfers in Violation of Section 310(b) of the Communications Act

4. For some time prior to March 25, 1937, ownership of the capital stock of the applicant was vested as follows:

Stockholder	*A Stock*	*B Stock (Voting)*
George A. Crockwell	400	200
James K. Phelan	300	150
William H. Eynon	300	150
Robert C. Nordblom	—	500

729 5. On March 25, 1937 these stockholders at one time and place, through a multiplicity of documents, assigned and delivered to Lafount and the two Cohens 700 shares (70%) of the Class B voting stock for which Lafount then and there paid $52,500. 400 shares were for Lafount and 300 shares (supplied by Nordblom) were for Sanford H. and George Cohen who were not then present. Upon Lafount's instruction, two new certificates for 400 and 300 shares repectively were forthwith issued from a temporary stock certificate book and delivered to Lafount. The larger was in Lafount's name. The smaller, however, "as a convenience to the Cohens," was issued in Nordblom's name, immediately endorsed in blank by him, and

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delivered to Lafount. Within 40 days, they were replaced by permanent certificates in the same tenor. As with the temporary certificate for 300 shares, Lafount caused the new certificate again to be issued in Nordblom's name. Nordblom promptly endorsed it in blank and it was given to S. H. Cohen as the property of the Cohens. Cohen held the certificate from about May 1, 1937 until November 27, 1943, at which time he surrendered it for issuance of new certificates to cover a distribution originally agreed upon, namely, 200 shares to Sanford H. Cohen and 100 shares to George Cohen. Then, for the first time, the applicant reported to the Commission the transfer of these 300 shares and in the report, November 27, 1943 rather than March 25, 1937, was given as the date of transfer by Nordblom. During the interim the stock was voted by the record holder, Nordblom. The latter testified that this was solely for the convenience of the Cohens; that he had no pecuniary or proprietary interest in this stock.

6. On March 25, 1937, with the transfer of the 700 shares, the old officers and directors resigned and new officers and directors were elected as follows:

Harold A. Lafount —Director—President
Robert C. Nordblom—Director
Ben S. Fisher —Director
Helen Rose —Treasurer
Robert H. Davison —Clerk

Mr. Fisher was Washington radio counsel for Lafount and the Cohens. Helen Rose was the secretary of Sanford Cohen. Mr. Davison, while representing the sellers at the closing was also representing Lafount and the Cohens as their local attorney, a relationship which has continued until now. Mr. Nordblom was still a stockholder of 100 shares of voting stock having that day disposed of but 400 out of 500 shares previously held by him.

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Lafount forthwith took over and at all times since has been in control of the station and its policies for himself and the Cohens.

7. As a result of the transfers on March 25, 1937, ownership and control of the voting stock in the applicant became vested as follows:

Name	*No. of Shares*	*Percentage*
Lafount	400	40
S. H. Cohen	200	20
Geo. Cohen	100	10
Nordblom	100	10
Crockwell	200	20

And correspondingly there resulted a voluntary transfer to and acquisition by Lafount and the Cohens (as
730 owners of 70%) of legal and physical control of Station WORL, its facilities, license, and frequency.

8. On September 30, 1938, Sanford H. Cohen acquired title to 200 shares of Class B voting stock which had last been reported as Crockwell's. On September 24, 1940, for a consideration of $1,500 George Cohen purchased and took possession of the last 100 shares of B stock held by Nordblom.[1]

9. Section 310(b) of the Communications Act as amended provides:

[1] This purchase was handled similarly to that of the 300 shares. Nordblom, on September 24, 1940, endorsed his remaining certificate for 100 shares in blank and surrendered it to Lafount who was handling the negotiations therefor. The latter promptly delivered it to George Cohen as his property. George Cohen held it from 1940 to November, 1943, when he submitted it for transfer on the corporate books and caused the issuance of a fresh certificate for that number in his own name. Here again Nordblom, as a "convenience" to the buyer permitted the record ownership of these shares to remain in his name and voted them at stockholders meetings.

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"The station license . . . the frequencies authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer or control of any corporation holding such license, to any person, unless the Commission shall, after securing full information, decide that said transfer is in the public interest, and shall give its consent in writing."

Leave for transfer of control as aforesaid has neither been applied for nor consented to by the Commission.

10. The Board of Directors, since control was surrendered by the old stockholders, has been composed as follows: From March 25, 1937—Lafount, Fisher, Nordblom; from April 29, 1937—Lafount, Davison, Nordblom; from March 18, 1941, on—Lafount, Davison, S. H. Cohen.

11. Lafount and the Cohens contend that neither the acquisition of the aforementioned stock by them nor any activity in the management and control of the station can constitute a transfer of control within the meaning of Section 310(b) of the Communications Act since "control" as intended by the Act can exist only when more than 50% of the outstanding voting stock is held by any one individual; further, the sale of 700 shares on March 25, 1937, constituted two separate and distinct transactions, one for 400 shares to Lafount and the other for 300 shares to the Cohens and not a joint purchase which could have spelled out a transfer of control to a single group; that in any event transfer of control cannot be deemed to have been completed until 1943 when for the first time the Cohens decided to take the stock in their own names and caused new certificates to be issued accordingly. They do not deny they had paid for the stock or that they had complete physical control over the shares since 1937.

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731 12. These principals state the foregoing to be their sincere beliefs and, whether right or wrong in their conclusions, they never intended to deceive the Commission. They point to a report filed with the Commission on November 22, 1938, showing the transfer of 200 shares of Class B voting stock to Sanford Cohen on September 30, 1938 (see par. 9), which together with the reported transfer of 400 shares to Lafount on March 25, 1937 gave notice to the Commission that 600 shares or 60% of the voting stock had passed. They argue it cannot therefore be assumed that these principals intended to deceive the Commission with respect to control.

13. In support of their contention that they were not acting in concert in buying the 700 shares of B stock in 1937, Lafount and the Cohens testified that they were indifferent to control in the station at the time; that Lafount on March 25, 1937 was committed and prepared to purchase 400 shares only at a price of $48,000 pursuant to an agreement he had made with Crockwell and Nordblom on March 16, 1937; that this contract covered the only agreement then existing respecting WORL stock for himself or the Cohens; that the Cohens had authorized him but a day or two before (on March 23 or 24) to buy 300 shares for them, it being only then that he learned that such shares were available at $4500. The record, as hereinafter indicated, does not substantiate this argument.

14. On March 16, 1937, Crockwell and Nordblom entered into an agreement with their co-stockholders, Eynon and Phelan (hereinafter referred to as the stockholders' agreement), providing—whereas Eynon and Phelan each then owned 300 shares of Class A stock and 150 shares of Class B stock, and whereas Crockwell and Nordblom were about to enter into a contract with Lafount for the sale of 700 shares of B stock for $52,500; that therefore, Eynon and

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Phelan, in consideration of the payment of $2,500 each ($5,000 in all) to them from the proceeds of the sale to Lafount, agreed to deliver to Crockwell their aforementioned A and B stock duly endorsed for transfer and submit to the corporation their resignations as officers, directors, and employees. On their part Crockwell and Nordblom agreed to apply the $52,500 to the discharge of this $5,000 and all corporate obligations, "except certain . . . obligations as specified in the agreement with Lafount" and distribute the balance then remaining, 62½% to Crockwell and 37½% to Nordblom; in the event the corporate debts exceeded $38,000, then Nordblom was to assume the excess up to $1,500. Crockwell also agreed therein to resign as officer and director. The agreement concluded with a provision that if the proposed agreement between Crockwell, Nordblom and Lafount be not entered into on or before March 23, 1937, then his agreement shall be void.[1]

15. On the same day, March 16, 1937, Crockwell, Nordblom and Lafount entered into an agreement which provided: That in consideration of Lafount's payment of $48,000, Crockwell and Nordblom agreed (a) to transfer to Lafount 400 shares of Class B stock of which Crockwell was to supply 300 and Nordblom 100 shares; (b) to cause the payment of all obligations of the corporation (with several named exceptions) out of said $48,000; (c) to cause the liquidating value of the A stock to be reduced from $100 to $44 per share, and annual dividends thereon reduced pro-tanto from $5.00 to $2.20; and (d) to cause a change in the by-laws so as to provide that 50% of net
earnings after the payment of $6 annual dividends
732 on Class B stock would be applied to the liquidation
of A stock. The closing of this contract was set for March 25, 1937.

[1] At the foot of this agreement appear subsequently appended receipts signed by Eynon and Phelan wherein each acknowledged the payment of $2500 and full satisfaction of this agreement.

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16. On March 25, 1937 Nordblom, Crockwell, Phelan, Eynon, Lafount, and Ben S. Fisher (attorney for the Cohens and Lafount) met at the office of Robert H. Davison (local attorney for WORL, Nordblom, Crockwell, Phelan and Eynon) and proceeded to close their several agreements and understandings. Lafount gave Davison a cashier's check dated March 24, 1937 in the sum of $52,500 of which $48,000 was to cover the sale and transfer of 400 shares of Class B stock to Lafount pursuant to his contract of March 16, 1937, and the balance of $4,500 was to cover the sale and transfer of another 300 shares of Class B from Nordblom to the Cohens. To evidence the latter transaction, a separate writing was agreed upon. The Cohens being absent from the meeting, Lafount requested Fisher to act as their agent. Accordingly, "Ben S. Fisher, Agent" was party to a written agreement dated March 25, 1937 with Robert C. Nordblom wherein the former agreed to buy and the latter agreed to assign, transfer, and deliver to Fisher 300 shares of B stock for $4,500; with performance to take place the same day. As set forth in Paragraph 5 herein these 300 shares were delivered to Lafount for the Cohens and 400 shares were transferred to Lafount as his own.[1] Eynon and Phelan performed their covenants of March 16 by supplying 300 of these 400 shares (they also assigned 600 shares of A to Crockwell, as agreed) and resigned all offices in the corporation. Crockwell also resigned. From the $52,500 received by him, Davison paid Eynon and Phelan $2500 each and retained the balance in escrow (a) to pay corporate creditors all obligations described in the two agreements of March 16, 1937 and (b) to distribute the remainder as provided in the stockholders' agreement of March 16th, viz., 62½% to Crockwell and

[1] Six days later, on March 31, 1937, Fisher who was then a director of the applicant company filed a verified statement executed by an officer, Davison, reporting the transfer of 400 shares of B stock to Lafount. No mention was made of the transfer of 300 shares. In his covering letter, Fisher wrote that the report shows "a change in ownership of a minority of the stock of this corporation."

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37½% to Nordblom. It is thus seen that on March 25, 1937, the parties had met to close a deal previously agreed upon for transfer of 700 shares of Class B stock at $52,500. And as a matter of record we have Nordblom's testimony that the two agreements of March 16, 1937 were part and parcel of a single transaction for 700 shares. On cross examination, Lafount admitted that the stockholders' agreement of March 16, 1937 was a condition precedent to the carrying out of his own agreement of the same date.

17. That the acquisition of 700 shares was a joint enterprise by Lafount and the Cohens is further borne out by their subsequent conduct. After March 25, 1937 Lafount ran the station for himself and the Cohens to whom he referred as his "partners". Severally they acquired other stock in the applicant at various times and prices but between themselves they prorated the cost of these several purchases. These adjustments began with the very first 700 shares acquired on March 25, 1937 at which time it was agreed that out of the total cost of $52,500 Lafount assume $30,000 equal to 400/700ths of the stock purchased that day, and the Cohens 300/700ths or $22,500.

733 *Extent and Manner of Conformance with Rules and Regulations Requiring Reports of Transfers of Stocks, and Agreements and Contracts Relating to Stock*

18. Broadcast Division Order No. 2 adopted in 1934, Rule 340.01 adopted May 11, 1938, and Rule 43.1 adopted July 12, 1939, which successively superseded each other, have required this licensee, within 30 days of any change in holders or beneficial owners of its corporate stock to report the same in detail and in conformity with instructions set forth in forms adopted by the Commission for the purpose.

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The particulars required until May 11, 1938 were as to stock relinquished, "name of stockholder prior to transaction, . . . shares and kind of stock, . . . amount actually paid for stock, date of acquisition" and as to the transferee, "name . . . shares and kind of stock transferred or purchased, amount actually paid for stock." From May 11, 1938 on, the licensee was required to report in addition to the foregoing the "amount received" by the relinquishing stockholder and to "state whether or not there have been any new contracts (written or oral and not theretofore reported) relative to (1) the voting rights of any stock; (2) ownership or control over the station, or rights or interests therein . . ." Certified copies of such contracts (oral contacts being reduced to writing) were to be attached.

The applicant has used the various forms promulgated under these rules and has thereby evinced familiarity with the rules and regulations. It has, however, as hereinafter indicated, failed to submit reports in due time, and in several instances, has omitted required information or given erroneous data, or both.

19. As previously described, on March 25, 1937 there was a transfer of 700 shares of Class B stock for a consideration of $52,500.00. Lafount acquired 400 shares on his own behalf for $48,000, for which a new certificate was issued in his name. The remaining 300 shares were for the Cohen account, but a certificate was issued in Nordblom's name, endorsed in blank by him, and delivered to the Cohens. Six days later,—on March 31, 1937—a verified statement was filed with the Commission by Ben Fisher, Washington attorney for the licensee, reporting the transfer of 400 shares of Class B stock to Lafount. Instead of the $48,000 mentioned in the Lafount contract of March 16, 1937 and in his testimony, the report gave $30,000 as the amount paid. No mention was made of the transfer of 300 shares of Class B stock from Nordblom to the Cohens.

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20. The new certificates for 400 and 300 shares given to Lafount on March 25, 1937, for himself and the Cohens, respectively, were as heretofore stated, from a temporary certificate book. They were replaced on April 27, 1937, by permanent certificates in the same tenor. The new certificate for 300 shares was again issued in Nordblom's name, endorsed by him in blank and given to Lafount for delivery to the Cohens. Sanford H. Cohen took possession thereof on about May 1, 1937, and held it until November 27, 1943, a period in excess of six years, when he surrendered it for transfer on the books of the corporation and caused two new certificates to be issued as follows: 200 shares to himself and 100 shares to his brother, George Cohen. For the first time this transaction was then reported on December 2, 1943. In lieu of March 25, 1937 as the date and $4,500 as the consideration, the report gave November 27,
734 1943 as the date and $5,000 as the consideration.[1]

21. On the stand, Lafount and the Cohens gave the following reasons (a) for failing to report the transfer of these 300 shares in 1937 and (b) why, when reported, it was given as a 1943 transfer:

On March 25, 1937 the Cohens were not present at the closing and Lafount did not know how they wanted the 300 shares divided between them. He, therefore, caused the stock to be reissued in Nordblom's name thus continuing the record ownership until he ascertained from the Cohens the number each was to receive. Within a few days Crockwell advised Lafount that Nordblom was dissatisfied with this deal. The Cohens thereupon decided that since such a claim might lead to a law suit or mutual rescission, they

[1] The language of the report consisted of:

"In accordance with the Rules and Regulations of Commission (Lafount), states that on November 27, 1943, 200 shares of Class B common stock were transferred from Robert C. Nordblom . . . to Sanford H. Cohen . . . for a total consideration of $3334, and that on November 27, 1943, 100 shares of Class B common stock . . . were transferred from Robert C. Nordblom . . . to George Cohen for a total consideration of $1,666.00"

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would not take the stock in their names until the matter was fully settled. This was the situation on April 23, 1937, when the permanent B certificates were issued. For this reason the new permanent certificate for these 300 shares was again issued in Nordblom's name, and with his blank endorsement given to the Cohens.[2] The Nordblom situation had not yet been cleared in 1939 when a new claim was asserted, this time by a Miss Natalie A. Whitwell, who lay claim to all the A and B stock of the corporation. Her claim went to suit.[3] Later, other claims involving the corporation arose. The Cohens then persisted in keeping the stock from appearing in their names since they did not want their names involved in any of the claims or suits. By the fall of 1943, all claims had been finally disposed of. The Cohens on November 24, 1943 paid Nordblom an additional $750 in settlement of claims he had asserted with respect to both these 300 shares and another block of 100 which he had sold to George Cohen on September 24, 1940. On November 27, 1943 when Nordblom executed a general release of all claims, the Cohens thereupon permitted the transfer of these 300 shares to be made on the books of the corporation with 200 shares in Sanford H. Cohen's name and 100 shares in George Cohen's name.[4] They also testified that pending the decision to take this stock in their own names, Nordblom had continued to remain the record owner and had actually voted the stock.

735 22. Lafount and the Cohens contend the transfer was not fully completed until the decision in 1943 to accept the stock in their names; that there was, therefore,

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[2] Lafount on cross examination admitted, however, that it had been agreed on March 25, 1937 to reissue these 300 shares in Nordblom's name when the permanent certificates became available.

[3] The Whitwell suit as filed was in law against the corporation for money damages rather than in equity for the stock.

[4] It is to be noted that despite the contention that only with these book transfers did the Cohens formally and legally acquire title to these shares which brought their record ownership to 600 or 60% of the voting stock, they still refrained from applying for consent to the transfer of control as required by Section 310(b) of the Act.

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no impropriety in failing previously to report the same. They admit, however, that Nordblom, from the moment he sold these shares, never had possession or the right to dispose of the stock, but on the contrary possession and the right of disposal was at all times with the Cohens. Nordblom himself testified that the stock was retained in his name on the corporate books and voted by him solely as a convenience to the buyers.

In appraising the Cohens' contention that they refused to take the original lot of 300 shares of B stock (as well as a block of 100 shares bought by George Cohen from Nordblom on September 24, 1940) because of dissatisfaction asserted by Nordblom in July, 1937 and finally settled for $750 in November, 1943, it is significant that the first time Nordblom asserted any claim with respect to stock he had sold to Lafount or the Cohens was in May, 1943. It related solely to dissatisfaction with the price received on September 24, 1940 for the block of 100 shares. Correspondence between the parties and their counsel as well as Nordblom's testimony, show clearly that there was one dispute and it involved the 100 share transaction. Lafount admitted that he saw Nordblom on a number of occasions and that Nordblom never asserted any claim arising out of the 300 share deal. He also admitted on cross examination that the $750 settlement related solely to the 100 share transaction. The Cohens likewise, received no complaint or claim from Nordblom.

23. As their reasons for reporting the consideration in the Lafount purchase of 400 shares of Class B stock on March 25, 1937 at $30,000 instead of $48,000 and in reporting the Cohen purchase of 300 shares of Class B as at $5,000 instead of $4,500, Lafount and the Cohens testified:

These two deals and the blocks of stock involved were at all times intended to be separate and apart. They were acquired separately on March 25, 1937 with Lafount tender-

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ing the aforementioned cashier's check for $52,500 of which $48,000 was paid and accepted for his lot of 400 shares and $4,500 for the Cohen lot of 300 shares. Inasmuch as some $38,000 of the $48,000 transaction was to be used for liquidating corporate obligations, the prices fixed for Lafount's block did not appear disproportionate to the Cohen purchase. But regardless of the contract prices for these shares, Lafount and the Cohens had previously agreed to prorate and adjust the cost of the 700 shares between them. At a total cost of $52,500, the price per share amounted to $75. The actual cost to Lafount at the time was, therefore, was therefore used in the report to this Commission.

The actual cost to the Cohens was $22,500 and if they had reported their acquisition at the time, $22,500 would have been entered as the consideration. It was not reported at this figure in 1943, they testified, because following the original purchase, the Cohens and Lafount acquired all of the stock of the corporation at various times and prices and had agreed among themselves that the cost per share to each would be readjusted on the basis of the amount paid for all stock. After a consideration of these several prices it was determined that as between themselves, the Cohens were entitled to credits which brought the originally prorated cost of $22,500 down to $5,000 and this latter figure was therefore used in the report of this Commission.

24. In the verified statement filed with the Commission March 31, 1937 reporting the sale of 400 shares of Class B stock to Lafount, the applicant also reported the transfer on March 25, 1937 of 600 shares of Class A stock
736 from Eynon and Phelan to Crockwell for a consideration of $26,400. The contract of March 16, 1937, described in Paragraph 15, above, pursuant to which these shares were sold, specified a consideration of $2,500 each or $5,000 in all. Introduced in evidence were receipts signed by the latter acknowledging payment of $2,500 each. The consideration of $26,400 reported to the Commission

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therefore exceeds by $19,400 the sum actually paid the transferors.

25. On July 12, 1937, at Lafount's request and personal assurance of payment, Bulova loaned Crockwell $5,000 on a six months note secured by two certificates covering 200 shares of B stock then standing in the latter's name. The debt was dishonored and on July 28, 1938 the security was foreclosed at public auction. Davison with a bid of $100 advanced by Lafount purchased the stock in Bulova's name. On September 30, 1938, Bulova delivered to Sanford H. Cohen the certificates so purchased with a separate assignment reading: "I, having heretofore purchased Certificate B1 for 100 shares and Certificate B2 for 100 shares of Class B . . . heretofore owned . . . by . . . Crockwell do . . . sell, assign, and transfer to (S. H. Cohen) all my right, title and interest to the said shares of stock and direct the entry of this transfer upon the books of the corporation and the issuance of a stock certificate . . . to (S. H. Cohen)." Sanford Cohen settled with Lafount for the $100 advance and paid Bulova the entire $5,000 debt thus bringing his cost in acquiring these shares to $5,100.

26. The transfer of the Crockwell stock to Bulova on July 28, 1938 and the Bulova to Sanford Cohen transfer on September 30, 1938 were never reported to the Commission.

27. Instead of reporting those transfers to the Commission, Lafount on November 22, 1938 filed FCC Form 730 verified by him on October 26, 1938, reporting the relinquishment or sale of these 200 shares by Crockwell directly to Sanford Cohen for $100. Lafount and Cohen stated that their reason for reporting the transfer in Sanford Cohen's name in the first instance rather than in Bulova's was that the purchase at auction was in fact for Cohen. They testified that prior to the auction it had been agreed that

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Cohen was buying in at the sale; Cohen did not attend but Davison as his attorney and agent was instructed to make the purchase in his behalf; instead of following instructions Davison made the purchase in Bulova's name; that Cohen was on vacation when the stock certificates and auctioneer's bill of sale reached his office and upon his return in September, 1938, he promptly took steps to get the stock in his own name; that the Bulova-Cohen transaction was necessary to effectuate their original intentions.

28. On March 8, 1939, 900 shares of A stock pledged by Crockwell to secure a loan from Raldne Realty Company were foreclosed at public auction. Lafount became the purchaser at $2,450. The stock was transferred on the corporate books and a new certificate issued him on March 15, 1939. Nevertheless no formal report under the rules was filed with the Commission until April 15, 1940.

29. On July 14, 1938 the applicant filed FCC Form 728, reporting among other data, the possession by one Lester Endlar of 100 shares of Class A stock. No formal report of the name of the transferor, the date of and consideration for transfer as required by the rules have been filed. According to the record Endlar acquired these shares from Crockwell on June 29, 1938.

737 30. On September 24, 1940 Endlar sold and delivered these 100 shares to Lafount for $3,100. With this purchase Lafount became the owner of all 1000 shares of Class A stock. Lafount held the Endlar certificate until March 31, 1941 when he caused it to be transferred on the corporate books. On May 1, 1941 Lafount reported this transaction to the Commission. In place of September 24, 1940 as the date and $3,100 as the consideration, he swore to March 31, 1941 as the date of transfer and $3,500 as the amount paid to and received by Endlar.

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31. Lafount explained the delay in reporting the two transactions in A stock as pure oversight and regrettable neglect. He accounted for the difference between $3,100 and $3,500 as expenses incurred in connection with the 100 share transaction. These he figured into the cost. That does not explain, however, why he reported $3,500 as the "amount received" by Endlar, nor why he reported March 31, 1941 rather than September 20, 1940 as the date of transfer and acquisition. It will also be observed that in no other report filed with the Commission has the applicant included expenses as part of the consideration.

32. On September 24, 1940 Nordblom also sold, transferred and delivered his remaining 100 shares of B stock to Lafount for $1,500. Lafount testified that although purchased in his name, the deal was for the benefit and interest of George Cohen and that he forthwith turned the stock over to George Cohen who in due time repaid the $1,500. After holding these shares for three years, Cohen surrendered them for transfer on the books of the corporation and a new certificate dated November 9, 1943 was issued to him. Eight days later, on November 17, 1943, the transaction was reported to this Commission in an affidavit executed by Lafount attesting to a transfer from Nordblom to Cohen on November 9, 1943 rather than the true date of September 24, 1940.

33. In May, 1943, a dispute arose between Nordblom and Lafount over the price paid for these 100 shares.[1] It was finally settled on November 24, 1943 by Lafount paying Nordblom an additional $750.

34. Lafount and the Cohens contend that the same reasons, set forth at length in Paragraph 21 above, which deterred the Cohens in accepting the original block of 300

[1] See also Paragraphs 21 and 22, *supra*.

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shares in their names applied to their failure to register or report these 100 shares to the Commission. These were generally that they would not take any stock in their names while claims or suits were pending; that until the Cohens finally consented to accept the stock in their names, they did not consider the transaction complete or subject to report to the Commission. These contentions are dissolved by the findings set forth in Paragraph 22.

False Statements by the Applicant's Officers, Directors, and Stockholders Relative to Ownership, Transfer and/or Control of Voting Stock

35. As a matter of law and fact, the 300 shares of B sold by Nordblom to the Cohens on March 25, 1937 and the 100 share lot which George Cohen acquired from him on September 24, 1940 became immediately the property of the Cohens. They have conceded control and ownership. Nevertheless, in every application and official form requiring disclosure of the owners of stock filed by the applicant with the Commission in the six year period following March 25, 1937, the applicant falsely represented Nordblom to be the owner. In at least nine applications Nordblom was listed as owner. On eight other occasions the applicant filed applications containing reaffirmation of all statements contained in previous applications
738 wherein Nordblom was listed as the owner. To the same effect was the statement contained in several applications that the applicant had filed all reports required by Section 43.1 of the Rules and Regulations. All were executed by Lafount under oath.

Typical of these were:

(a) Application for renewal of license filed July 16 and amended July 28, 1937,

"Q. 7(d)—Give names . . . of all stockholders owning and/or voting 10% or more of appli-

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cant's stock and percentage of stock held by each.

"A.—George Crockwell . . . 200 shares common, Harold A. Lafount . . . 400 shares common, Robert C. Nordblom 400[1] shares common."

(b) Application for construction permit filed April 1, 1940

"Q. 9(g)—. . . Give the name of . . . all persons owning or controlling 10% or more of the voting stock of applicant corporation:

"A.—Harold A. Lafount 400 com., 40%
Robert C. Nordblom 400 com., 40%[1]
Sanford H. Cohen 200 com., 20%"

(c) An application for renewal of license filed May 18, 1942,

"Q. 7(c)—Has applicant filed the report and necessary supplemental reports required by FCC 43.1 of the Rules?

"A.—Yes."

. . . . . .

"Q. 15—Applicant's last application for station license is to be considered as part of the application and the truth of the statements therein contained is hereby reaffirmed, except so far as the contrary expressly appears herein, and in the following particulars:

"A.—None."

(d) Statement of information on FCC Form 728 filed July 14, 1938 pursuant to the then Rule 340.01:

"Stock owned (voting)—
Robert C. Nordblom 400[1]
Harold A. Lafount 400
Crockwell 200

[1] At the time each of these applications was filed, Nordblom owned but 100 shares; 300 were owned by the Cohens.

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Lafount in his affidavit failed in any way to qualify Nordblom's "ownership" despite the clear instructions in this form reading:

739 "If stock is beneficially held by a person (natural or artificial) other than the record holder (and such beneficial owner has not been identified in reporting the voters other than record holder) state the name . . . of the person or persons empowered to designate the voter or voters of the stock, making these statements on an exhibit referred to by number in this column."

36. There was a definite oral understanding and agreement between Lafount and Nordblom that the Cohen stock be reissued in Nordblom's name and that he appear as stockholder and vote the same; that he be a director, all as a courtesy and convenience to the Cohens. The arrangement was revocable at the will of the Cohens who at all times had physical possession of the stock so voted. This condition continued from March 25, 1937 to 1943. Lafount, nevertheless, on four different occasions executed and filed with the Commission verified statements to the effect that there existed no "contracts (written or oral) or other instruments which affect or concern (1) the voting rights of any stock; (2) the ownership or control over the station or rights or interests therein." On one such report, George Cohen then an owner of part of these shares, acted as notary to Lafount's oath.

37. The applicant in 1937 filed an application with the Commission for a construction permit to increase the power and hours of operation of Radio Station WORL, the prospective cost of which was expected to reach approximately $20,000. In connection with that proceeding, Lafount submitted a financial statement for the station as of April 30, 1937 listing "Cash in banks $25,362." Cor-

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porate obligations were shown at less than $700. The application went to hearing, (Docket No. 4206) and Lafount testified that the financial statement had been prepared under his direction and supervision, that it was accurate and the cash specified was available for the improvements which were contemplated.

In the present hearing, Lafount admitted the applicant had no such sum in the bank or in cash. He then stated that $25,000 of the foregoing amount was a loan from him. Upon being shown that the financial statement contained no liability or offset indicating such indebtedness, he admitted that there was only $362.11 on deposit at the time. He insisted, however, that he did have $25,000 available which he would have loaned to the station if the application had been granted. The applicant now contends that no reliance was then placed on the financial statement or Lafount's 1937 testimony since the application was denied. The denial of the application was solely on technical grounds of objectionable interference during nighttime hours. (Docket 4206, 7 FCC Reports 242, 246.)

740 CONCLUSIONS

1. On March 25, 1937, Harold A. Lafount, Sanford H. Cohen, and George Cohen, acting jointly, acquired 700 shares, or 70%, of the voting stock of Broadcasting Service Organization, Inc., licensee of Station WORL, Boston, Massachusetts, and since that time these parties have jointly been in full control of Station WORL and its facilities.

2. Of the 700 shares (70%) acquired on March 25, 1937, Lafount acquired 400 shares or 40%, George Cohen, 100 shares or 10%, and Sanford Cohen, 200 shares or 20%. Subsequently, on September 30, 1928, Sanford Cohen purchased 200 additional shares, increasing his interest to

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40%; on September 24, 1940, George Cohen purchased an additional 100 shares which increased his interest to 20%.

3. The Cohens and Lafount contend that neither the acquisition of stock by them nor their activities in the management and control of the station constituted a transfer of control within the meaning of Section 310(b) of the Communications Act. They argue that "control" as intended by the Act exists only when more than 50% of the outstanding voting stock is acquired by any one individual. The witnesses stated that the purchase of the 700 shares on March 27, 1937, were two separate and distinct transactions, one for 400 shares and the other for 300 shares and not a joint purchase which could have resulted in a transfer of control to a single group; that in any event the transfer of stock control cannot be deemed to have been completed until the Cohens decided to accept the 300 shares in their names. These contentions are untenable.

Section 310(b) of the Communications Act reads:

> "A station license . . . and the rights therein granted shall not be transferred, assigned or . . . disposed of . . . to any person . . . unless the Commission shall . . . give its consent in writing."

The language is clear that the consent required is for the transfer or disposal of control. On March 25, 1937, Nordblom, Crockwell, Eynon and Phelan transferred and disposed of their joint control to these purchasers; the registration of stock certificates in the names of the purchasers could add nothing to the completeness of the surrender of ownership and transfer of control by the sellers. Nor could the stock registration detract in any manner from the complete ownership of these shares by these purchasers.

Moreover, the evidence is convincing that Lafount and the Cohens acted jointly in completing the transfer. They

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have been close business associates for many years, and in this transaction their actions closely indicate a mutuality of interest and a joint purpose in acquiring this stock.

A transfer of more than 50% of the voting stock of a licensee is an obvious transfer of control for which consent must be obtained. But control as intended by the Communi-
cations Act is not limited to the ownership of a ma-
741 jority of the voting stock of a corporate licensee.
It also includes physical operation and control of a station, its facilities and policies (See in re Westinghouse Electriet Manufacturing Co., 8 FCC, 195; in re Radio Enterprises, Inc., 7 FCC, 169). Such control has been exercised by Lafount and the Cohens ever since their purchase in March, 1937, without the consent of the Commission, in violation of Sections 301 and 310(b) of the Communications Act of 1934, as amended. The experience of the applicant's principals in radio stations indicates they knew or should have known the import of these sections.

4. The contentions and explanations of Lafount and the Cohens do not mitigate the gravity of their non-compliance with the Communications Act; nor does their argument that no assumption can be made that they intended to deceive the Commission with respect to control because of the 1937 report to the Commission of the transfer of 400 shares to Lafount and of the 1938 report with respect to the subsequent transfer of 200 shares to S. H. Cohen. The fact that they reported some separate transfers does not overcome the fact that the 1937 report of Lafount's interest only was a false report deceiving the Commission as to the joint purchase by Lafount and the Cohens of 70% of the voting stock of the corporation. This deception continued by the filing of a number of other reports until 1943.

5. Not only did the applicant and its principals fail to apply for consent to the transfer of control resulting from the change in ownership of the 700 shares (70%) of voting

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stock on March 25, 1937, but they also concealed from the Commission the majority transfer of Class B voting stock, and reported their other acquisitions in such manner and at such times as suited their particular purposes and convenience without regard to rules and regulations of the Commission. On March 31, 1937, they filed a verified statement reporting the transfer of 400 shares (40%) of Class B stock only. Accompanying the report was a covering letter emphasizing "These reports show a change in ownership of a minority of the stock of this corporation." No report covering the transfer of the other 300 shares of Class B stock was filed until December 2, 1943, and at that time it was reported as a transfer occurring November 27, 1943. Similarly, the transfer of another block of 100 shares of Class B voting stock from Nordblom to George Cohen which occurred September 24, 1940, was concealed until November 24, 1943, when it was reported as having occurred on November 9, 1943.

6. During the six years following March 25, 1937, these principals filed over seventeen subsequent reports and applications, knowingly misrepresenting under oath that Nordblom continued to be the owner of these 300 shares. The same pattern was followed in connection with the transfer of the block 100 shares from Nordblom to George Cohen on September 24, 1940.

7. Consistency was also demonstrated in every report, six in number, filed with the Commission since July 25, 1937, in purported compliance with Rule 43.1 and its predecessors. In each the applicant gave false information as to one or more of the following details: Date of sale, date of acquisition, consideration, transferor, transferee.

742 8. Two transfers which should have been reported to the Commission under Rule 43.1 and its predecessor were not reported, namely, (a) the transfer on July 27, 1938, of the 200 shares of Crockwell B stock

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to Arde Bulova, and (b) the transfer of this number by Bulova to Sanford H. Cohen on September 30, 1938.

9. The record establishes that the applicant has submitted false reports and testimony in order to convey such impressions as it deems necessary and expedient. In Docket 4206, a balance sheet was introduced to show that the applicant was financially qualified to pay for the improvements requested in the station facilities. This statement showed "Cash in bank—$25,362" when actually the balance on hand was only $362.11.

10. Licensees and their principals must at all times be honest and candid with the Commission. Applications and reports filed by them must be truthful and accurate. In connection with this, it is to be noted that under Section 312 of the Communications Act licenses and renewals of license are subject to revocation for false statements in the applications therefor. This Commission has repeatedly stated that in the performance of its duties it must of necessity rely upon statements made by station licensees or those connected therewith; that caution must, therefore, be exercised to grant station licenses only to those persons whose statements and testimony are trustworthy. In re Curler Broadcasting Corporation, 9 FFC, 92; In re Mayflower Broadcasting Corporation, 8 FCC, 333; In re John Stenger, Jr., 8 FCC, 434; In re WOKO, 10 FCC, . This applies with greater force to those who deliberately evade the Communications Act and the Rules and Regulations promulgated thereunder.

11. Even if we were to assume as true the contentions of innocence as to a proper understanding of the statute and regulations, which assumption we do not adopt, we would be compelled to apply here the principles of a conclusion reached in another proceeding wherein the Commission held, "the failure properly to investigate the

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statutory requirements was the result of negligence, which is especially culpable and inexcusable on the part of (Hart), who as shown in this opinion had previously had many years of experience in the business of radio broadcasting. Had this sale involved the acquisition of the controlling interest by Hart, the Commission would have felt constrained under the circumstances to have denied any application for approval thereof." (In re Honolulu Broadcastnig Company, 5 FCC, 623, 630).

12. The integrity of the proceedings before the Commission and of the administrative process are involved in the issues in this proceeding. It is of paramount importance that the Commission be able to rely on representations made by applicants and licensees and their attorneys in carrying out its functions, whether such representations are made in formal applications or reports filed with it or in testimony produced before it. The Commission must require that such representations be worthy of reliance if it is to have confidence in its own proceedings.

13. From a consideration of all the material facts found in the record of this hearing, the Commission has concluded that the applicant cannot be entrusted with the responsibilities of a licensee. The Commission, therefore, finds that a grant of the application for renewal of license for the operation of Station WORL by the applicant corporation would not serve public interest, convenience, or necessity and should be denied.

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FEDERAL COMMUNICATIONS COMMISSION

T. J. SLOWIE
Secretary

Adopted October 24, 1945.

Released October 24, 1945. See Section 1.231 of the Commission's Rules of Practice and Procedure.

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[Filed November 27, 1946]

747 **Applicant's Exceptions to Proposed Decision and Request for Oral Argument**

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

FILE NO. B1-R-205

DOCKET NO. 6626

In re Application of:

BROADCASTING SERVICE ORGANIZATION, INC. (WORL), Boston, Massachusetts

For Renewal of License

Comes now Broadcasting Service Organization, Inc., by its attorneys, pursuant to Section 1.231(g) of the Rules, and respectfully submits the following exceptions to, and requests oral argument on, the proposed decision of the Commission dated October 24, 1945 that a grant of the above-entitled application is not in the public interest and should be denied:

1. The Commission erred on page 2 of the proposed decision in setting forth between paragraphs 3 and 4, the heading "Transfers in Violation of Section 310(b) of the Communications Act." This is a conclusion of law improperly included in findings of fact and without support in the hearing record.

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2. The Commission erred in paragraph 4 by not making a finding: (1) That Robert C. Nordblom, who theretofore had no connection with Broadcasting Service Organization, Inc., on July 29, 1936 purchased 500 shares or 50% of the authorized voting (class B common) stock of the licensee corporation and was elected President and a Director of the corporation (T. 509, 521); and (2) that although the licensee reported to the Commission Nordblom's newly acquired stock interest and official position early in August, 1936 and this report remained unchanged until March 31, 1937, the Commission at no time during this period
748 either required or requested that the licensee file application for transfer of control of the corporation to Nordblom under the requirements of Section 310(b) of the Communications Act (T. 37, 39).

3. The Commission erred in paragraph 5 by implying that Harold Lafount and the Cohens "through a multiplicity of documents" on March 25, 1937 jointly acquired control of the voting stock of the licensee corporation, whereas in fact: (1) Lafount and the Cohens had no business or partnership connections in their respective acquisitions of the stock of the licensee and had no business connections of any sort except that all were associated with Arde Bulova (T. 141); (2) the purchase by the Cohens of 300 shares of B stock from Nordblom was negotiated separately from Lafount's purchase of 400 shares of B stock from Crockwell and Nordblom and was a separate contract to which Lafount was not a party (T. 60, 78, 80, 81, 89, 107, 142, 213); and (3) Lafount when purchasing his 400 shares of B stock did not acquire nor did he intend to acquire a majority interest in the corporation (T. 54, 140, 145).

4. The Commission further erred in paragraphs 5 and 22, in finding that Nordblom testified his voting until November 27, 1943 of the 300 shares of B stock sold to the

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Cohens March 25, 1937 was "solely for the convenience of the Cohens" and that "he had no pecuniary or proprietary or proprietary interest in the stock. On the contrary, Nordblom state that his voting of the 300 shares after March, 1937 was *solely* for the Cohens' convenience and nowhere in the record does Nordblom state that he had no pecuniary or proprietary interest in the stock. On the contrary, blom testified that he was glad to remain a Director and voting stockholder after March, 1937, "because the station was still a tenant of the hotel that I ran and it was
749 good business for me to watch the progress of the station" (T. 535-536). He also testified that he stayed on because he was dissatisfied with the price received for the sale of the stock (T. 537). The record further shows that within a month after March 25, 1937, Crockwell told Lafount that Nordblom had expressed dissatisfaction over the sale of his stock to the Cohens and Nordblom agreed to remain the nominal owner of the stock until this dissatisfaction had been cleared up (T. 117, 118). The minutes show that Nordblom appeared at ten stockholders' and Directors' meetings between March 25, 1937 and April 6, 1943 and voted the 300 shares of B stock sold to the Cohens, as well as the 100 shares of B stock he still owned (T. 147-150, 519, 526).

5. The Commission erred in paragraph 6 in stating that on March 25, 1937 "Lafount forthwith took over and at all times since he has been in control of the station and its policies for himself and the Cohens". It is true that when Lafount purchased his 400 shares of B stock, he insisted that new officers and directors be elected but this was because, although only acquiring a minority interest, he was paying off all the debts of a virtually bankrupt corporation (T. 146). He has been in charge of the operation of WORL since 1937 but in his capacity as President of the corporation responsive to the Board of Directors rather

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than as a controlling stockholder. From April 29, 1937 to March 18, 1941 the Board of Directors consisted of Lafount, Nordblom and Davison, the latter Nordblom's personal attorney (T. 148, 152). The Cohens never voted their 300 shares of B stock or attended stockholders' meetings nor in any way participated in the operation of WORL until a final settlement had been made with Nordblom in the Fall of 1943 (T. 154, 340). Moreover, Harold Lafount at no time voted the 300 shares of B stock which the
750 Cohens had purchased from Nordblom (T. 147, 229). Lafount and Sanford Cohen both specifically deny that they exercised joint control over WORL (T. 140, 341).

6. The Commission erred in paragraph 7 in finding that on March 25, 1937 ownership and control of 70% of the voting stock "became vested" in and "there resulted a voluntary transfer to and acquisition by Lafount and the Cohens of legal and physical control of Station WORL, its facilities, license and frequency". This is a conclusion of law without foundation either in the evidence or in fact. The record shows that ownership and concomitant control of the Cohens' 30% voting stock interest did not "vest" until November, 1943, when stock certificates were first issued in their names and all disputes over the 300 shares had been finally settled (T. 340, 363).

7. The Commission erred in paragraph 8 in failing to make a finding that: (1) The purchase of 200 shares of B voting stock by Sanford Cohen on September 30, 1938 was reported to the Commission November 27, 1938 (T. 24, 256); and (2) although this report showed that Harold Lafount owned 400 shares of B stock, Sanford Cohen 200 shares and Robert Nordblom 400 shares, at no time did the Commission request or require that an application for transfer of control be filed although on notice that Lafount and Cohen together held 60% of the voting stock (T. 37, 260, 295, 327).

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8. The Commission further erred in footnote 1 of paragraph 8 by finding that Nordblom "as a convenience" to George Cohen permitted the record ownership of the 100 shares of B stock purchased by Cohen from Nordblom in September, 1940 to remain in Nordblom's name and he voted by him at stockholders' meetings until November, 1943. Nordblom himself testified that he was dissatisfied with the sale price he received for this 100 shares
751 of B stock and he stayed on as a stockholder and Director "to see what was going on" (T. 537-8).

9. The Commission erred in paragraph 9 in stating that "leave for transfer of control as aforesaid has neither been applied for nor consented to by the Commission". Whether, on the facts of this case, 310(b) of the Act requires leave for transfer of control is a conclusion of law improperly a part of findings of fact.

10. The Commission erred in paragraph 10 in stating that control has been surrendered by the old stockholders since March 25, 1937. This is a conclusion of law improperly in findings of fact and without support in the hearing record.

11. The Commission erred in paragraph 11 by finding that Lafount and the Cohens "do not deny that they had paid for the (700 shares of) stock or that they had complete physical control over the shares since 1937". The Cohens testified that their title to the 300 shares of stock purchased from Nordblom in 1937 did not vest and was not free and clear of all dispute over the purchase price until Nordblom was paid $750 additional on November 27, 1943 (T. 322, 364). The record shows that although the Cohens have had physical possession since 1937 of a certificate in Nordblom's name endorsed in blank by Nordblom for 300 shares, never until title vested in November, 1943 did they vote these shares or in any way assert a property

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interest in the shares which were still being voted by Nordblom, or in any way participate in the operation of the station or draw any dividends or salaries (T. 153, 340, 363). In effect, the Cohens held the 300 shares of B stock endorsed in blank merely as collateral security for the $4,500 paid Nordblom until all pending differences were cleared up.

752 12. The Commission erred in paragraph 13 in stating that "The record, as hereinafter indicated, does not substantiate this argument". This statement is wholly argumentative, improperly in findings of fact, and contrary to the evidence in the record.

13. The Commission erred in paragraphs 13-17 inclusive in finding that the sale and transfer of 400 shares of B stock to Lafount and 300 shares of B stock to the Cohens on March 25, 1937 was a joint enterprise by Lafount and the Cohens. Neither Lafount nor the Cohens were parties to the March 16, 1937 agreement between Crockwell, Nordblom, Phelan and Eynon providing for their sale of 700 shares of B stock for $52,500 (T. 65, 73, 80). This agreement by its terms expired March 23, 1937, two days before the Cohens first agreed to purchase any of the stock (T. 64-5). Lafount, however, was a party to a separate agreement of March 16th providing for his acquisition from Crockwell and Nordblom of 400 shares of B stock for $48,000 (T. 68, 70). The Cohens were not parties to this agreement or to the escrow agreement of March 25, 1937 further providing for the sale by Crockwell and Nordblom of 400 shares of B stock to Lafount; nor was Lafount a party to the separate agreement of March 25, 1937 between Nordblom and Ben S. Fisher as agent, initially providing for the acquisition by the Cohens from Nordblom of 300 shares of B stock (T. 60, 81, 142). Neither the fact that Nordblom considered the separate agreements of March 16th as a single transaction for the sale of 700 shares or that the agreement of March 16th between Crockwell, Nord-

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blom, Phelan and Eynon may have been a condition precedent to the second agreement of March 16th between Crockwell, Nordblom and Lafount in any way contradicts the evidence in the record that the Crockwell, Nordblom, Phelan and Eynon March 16th agreement by its ex-
753 press terms expired March 23rd; that the Cohens were not in any way concerned with either of the March 16th agreements; and that Lafount's purchase of 400 shares and the Cohens' purchase of 300 shares were two separate and distinct transactions and were considered by the respective purchasers as such (T. 64, 80, 81). The record contains no evidence of any partnership agreement or understanding, oral or written, between Lafount and the Cohens. On the contrary, it contains a specific disavowal of any such arrangements (T. 140, 341).

14. The Commission erred in paragraph 18 in stating that the applicant has, "as hereinafter indicated, failed to submit reports in due time, and in several instances, has omitted required information or given erroneous data, or both". The facts in the record nowhere support a finding or inference that the applicant has at any time wilfully or purposely delayed the furnishing of required information, failed to furnish required information, or furnished erroneous information. The record does show that any failures on the part of the applicant to promptly submit required information to the Commission have been due solely to inadvertence, neglect, or to honest mistakes in judgment.

15. The Commission erred in footnote 2 of paragraph 21 in finding that Lafount admitted that it had been agreed on March 25, 1937 to re-issue 300 shares in Nordblom's name when the permanent certificates became available. Lafount testified that the temporary certificate for 300 shares was issued on the March 25, 1937 closing date in Nordblom's name only because Lafount did not know at

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that date how the Cohens wanted the 300 shares divided between them (T. 122, 126). He further testified that the permanent certificate for the 300 shares issued on April 23, 1937 was again put in Nordblom's name because in the interim Crockwell told him that he and Nordblom were dissatisfied with their sales; and the Cohens refused
754 to allow ownership of the stock to vest in them until all dissatisfaction had been settled and no further claims against the stock were outstanding (T. 22, 144, 174, 219). Upon cross-examination by Commission counsel, Lafount stated, purely as a hindsight guess, that since the permanent certificate for 300 shares was issued in the same way as the temporary certificate "I take it (the issuance) must have been" in accordance with a previous understanding (T. 125).

16. The Commission further erred in paragraph 22 and footnote 3 thereof by indicating that the Whitwell claim as pressed was only in law for money damages rather than in equity for the stock. The record shows that early in 1939 Crockwell wrote Lafount that Hines, attorney for Mrs. Whitwell, was taking definite steps to recover for Mrs. Whitwell all the stock of the corporation (App. Ex. 6). Under date of July 28, 1941, Hines wrote Lafount demanding all of the outstanding stock of WORL on behalf of his Client, Natalie Whitwell (App. Ex. 8). As late as December 15, 1943 Hines, in testimony before a Congressional Committee, asserted claims against the corporation on behalf of Mrs. Whitwell (T. 326). The fact that suit was instituted at law in the Massachusetts court for money damages did not remove the continuing threat that an action in equity might also be instituted for recovery of the outstanding stock as claimed.

17. The Commission further erred in paragraph 22 by finding that "Lafount admitted he saw Nordblom on a

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number of occasions and Nordblom never asserted any claim arising out of the 300 share deal." Lafount testified that Nordblom did assert dissatisfaction directly to him over the price received for the 300 shares of B stock (T. 128-9). The Commission also erred in paragraph 22 by failing to make a finding, that shortly after the
755 March 25, 1937 closing date and repeatedly for two years thereafter, Crockwell told Lafount and the Cohens that Nordblom was dissatisfied with the payment which the Cohens had made to him for their 300 shares (T. 16, 138, 192, 213, 226). The record thus is clear that both Lafount and the Cohens understood Nordblom to be dissatisfied with the price received for the 300 shares of B stock. The record further shows and should include a finding that when Nordblom on November 24, 1943 was paid $750 additional, he released all claims arising not only from the purchase of 100 shares of B stock in September, 1940, but all claims arising out of his other B stock sales (T. 21, 205, 364).

18. The Commission erred in paragraph 24 in failing to include the applicant's explanation why the March 31, 1937 report to the Commission specified $26,400 as the total consideration which Crockwell paid Eynon and Phelan for 600 shares of A stock, while the March 16, 1937 contract specified $5,000 as the total amount paid the two men for these shares. $26,400 was reported as the consideration for the 600 shares because that was the par value of $44 per share. Eynon and Phelan's proportionate share of the corporate indebtedness to be paid off, deducted from the $26,400 par value left $5,000 net, which was the actual cash received (T. 63, 80, 130, 514). Moreover, Davison, Crockwell's attorney, prepared the March 31, 1937 report to the Commission specifying the amount paid Eynon and Phelan for their A stock—and at that time Lafount and the Cohens had no detailed knowledge of the private arrangements between Crockwell, Nordblom,

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Eynon and Phelan for settlement on the value of the A stock between themselves (Comm. Ex. 2 and 10; T. 64).

19. The Commission erred in paragraphs 25 and 27 in failing to make a finding that Sanford Cohen did
756 not reimburse Arde Bulova the $5,000 Bulova had loaned Crockwell, taking Crockwell's 200 shares of B stock as security, until *after* the report of October 26, 1938 had been filed with the Commission showing Sanford Cohen's acquisition of the 200 shares for $100 (T. 349). The Commission further erred in paragraphs 26 and 27 in failing to make a finding that title to the 200 shares of B stock foreclosed in his name July 28, 1938 never vested in Arde Bulova since a stock certificate was never issued in his name for the shares (App. Ex. 5). The Commission further erred in paragraph 26 in failing to find that the reason why the temporary possession by Arde Bulova from July 28, 1938 to September 30, 1938 of 200 shares of B stock in Crockwell's name, endorsed in blank, was not reported is that this stock had been foreclosed at public auction by Davison in Bulova's name by mistake while Sanford Cohen was on vacation; and that as soon as Sanford Cohen returned and discovered the error, a correction was made by the assignment of the 200 shares from Bulova to Cohen, and Cohen's ownership promptly was reported to the Commission (T. 255-6, 294, 474, 497).

20. The Commission erred in the last sentence of paragraph 32 by stating that the "true date" of the transfer of the 100 shares of B stock from Nordblom to George Cohen was September 24, 1940 rather than November 9, 1943 as reported. Determination of the true date of the transfer is a conclusion of law improperly in findings of fact. Moreover, since a stock certificate was not issued in George Cohen's name for this 100 shares until November 9, 1943, his title to the stock did not vest until that date. Conse-

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quently, the record shows that the true date of consummation of the transfer was November 9, 1943 (T. 25, 178).

21. The Commission erred in paragraph 33 by finding that the dispute between Nordblom and Lafount over
757 the price paid for the 100 shares of B stock did not arise until May, 1943. The record shows that the dispute with Nordblom over the price paid for this 100 shares arose immediately after the purchase in September, 1940 (T. 295, 371, 528, 536).

22. The Commission erred in inserting the heading "False statements" between paragraphs 34 and 35 of the findings of fact. This heading is a conclusion of law improperly in findings of fact and without foundation in the hearing record.

23. The Commission erred in paragraphs 35 and 36 in finding that the Cohens have conceded control and ownership of their B stock at all times since March 25, 1937. The records show that the Cohens did not exercise control of any said B stock in any way until a final settlement of the purchase price was made with Nordblom in November, 1943 (T. 154, 340).

24. The Commission further erred in paragraph 35 in finding that the applicant "falsely represented" Nordblom to be the owner of this B stock in every form filed with the Commission in the six year period following March 25, 1937. Lafount and the Cohens all testified that they honestly believed it was unnecessary to make a report concerning a sale of the B stock to the Cohens until November, 1943 when all claims against the stock had been settled and the Cohens became its record owners and first exercised control (T. 140, 142, 217, 327).

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25. The Commission further erred in paragraph 35 in indicating that form 728 required the 300 shares of B stock in Nordblom's name to be reported as held "beneficially" for the Cohens after March 25, 1937. The record shows that until all claims against the B stock had been settled, the Cohens in effect held the stock as collateral security and refused to take title to or assert any property interest
758 in the 300 shares (T. 117, 290, 321). During this period, the Cohens received no use or benefit, direct or indirect, from the stock. Therefore, it cannot be maintained that the applicant was required by form 728 to report the B stock as being held beneficially by Nordblom for the Cohens when the latter did not assert or obtain a beneficial interest.

26. The Commission erred in paragraph 36 in finding Nordblom's continuation after March, 1937 as the record and voting stockholder of the B stock in question and as a Director, was "all as a courtesy and convenience to the Cohens" revocable at the will of the Cohens. As set forth in paragraph 4 of these exceptions, Nordblom had a personal interest in remaining closely identified with the corporation after March, 1937 (T. 117-8, 535-6-7). Further, in the Cohens' view their control over the B stock purchased from Nordblom could not and did not commence "at their will" but rather at a theretofore undetermined date—November, 1943—when all of the pending claims of Nordblom and others had been finally settled (T. 174, 219, 290, 321).

27. The Commission erred in paragraph 37 in failing to find that the balance sheet showing $25,000 in the bank, submitted by the corporation with a construction permit application in 1937, was intended merely as a *proposed* balance sheet if full time operation, as requested, were approved (T. 399). Lafount intended to himself put up the $25,000 if the application were approved, and the cash was

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in fact in the bank although not to the credit of the corporation (T. 454, 543). He did not mean to infer either in the application or in his testimony at the hearing that the cash stood to the actual credit of the corporation (T. 544).

28. The Commission erred in failing to make a finding that although Broadcasting Service Organization, Inc., in March, 1937 had $38,000 in debts and was constantly
759 losing money, it has showed a net profit before taxes in every years since 1938 (T. 31, 35, 510). The record should include a finding that whereas in the first year Harold Lafount became President, WORL showed a loss of $11,424 on total receipts of $54,754, its financial position has steadily improved until in 1943 it showed a profit of $25,101 on total receipts of $240,468 (T. 35). The decision should include a finding that from 1937 to 1939 Harold Lafount personally loaned the corporation from $25,000 to $30,000, lal of which has been repaid and that it has not been necessary for the corporation to borrow any money since 1939 (T. 163, 164). The decision should also include a finding that no dividends have been paid to anyone by the corporation since Lafount acquired his B stock in 1937, all the profits having been spent in improvements for the station or investments in it (T. 165).

29. The Commission erred in failing to make a finding regarding the extent to which the present operation of program service of WORL is serving the public interest, convenience and necessity. The record shows and the decision should include findings that: (1) The station at present serves between 80 and 90 accounts a week, including 44 outstanding national accounts, and its weekly billings have gradually increased from $904 to $6,200 (T. 378-9); (2) in the last three years the Hooper rating of WORL has progressively risen from 8.4% in the morning and 9.4% in the afternoon during 1941 to 14.2% in the morning and

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12.3% in the afternoon during 1943 (T. 380); (3) WORL is in a tie for first place during daytime amongst Boston listeners (T. 376); (4) the station regularly donates free broadcast time to at least 70 outstanding local and national organizations for public service programs and regular time is also donated to numerous government agencies (T. 377);

(5) WORL is regularly presenting outstanding pro-
760 grams in behalf of civic and community betterment in the Boston area (T. 381-384); and (6) because of its outstanding public service programs, the station is the recipient of the McNinch Award for public service (T. 384).

30. The Commission erred in concluding from the record in this case that Lafount and the Cohens have jointly controlled Broadcasting Service Organization, Inc. since March 25, 1937 so that Section 310 (b) of the Communications Act requires application for transfer of control to be filed; that the applicant or its officers have intentionally submitted any false or deceptive reports to the Commission, or concealed any information from the Commission; that any knowing misrepresentations or false information have been given the Commission; or that any other false reports or testimony have wilfully and purposely been given the Commission. The Commission further erred in concluding that the applicant cannot be entrusted with the responsibilities of a licensee; that a grant of its application for renewal of license would not serve public interest, convenience or necessity; and that its application for renewal of license should accordingly be denied.

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31. The attached memorandum brief sets forth in detail the conclusions which should fairly be drawn by the Commission from the hearing record and the facts of this case.

Respectfully submitted,

BROADCASTING SERVICE ORGANIZATION, INC.

Ben S. Fisher,
Charles V. Wayland,
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Dated:

November 26, 1945

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[Filed—November 27, 1945]

Memorandum Brief to Accompany Exceptions and Request for Oral Argument

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

Docket No. 6626—File No. B1-R-205

In re Application of:

BROADCASTING SERVICE ORGANIZATION, INC. (WORL),
BOSTON, MASSACHUSETTS

For Renewal of License

JURISDICTIONAL STATEMENT

This Memorandum Brief is being filed pursuant to Section 1.231 of the Commission's Rules of Practice and Procedure.

PRELIMINARY STATEMENT

On October, 1945, the Commission published a preliminary decision wherein it proposed to refuse to grant a renewal of license to Broadcasting Service Organization, Inc. (a Massachusetts corporation) for the continued operation of broadcast station WORL, Boston, Massachusetts because it alleged that:

> "The applicant cannot be entrusted with the responsibilities of a licensee."

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Exceptions to this proposed decision and a request for oral argument on the exceptions are being filed simultaneously herewith.

QUESTIONS RAISED BY COMMISSION'S PROPOSED DECISION

Questions raised by the proposed decision of the Commission are:

1. Is the licensee corporation per se an entity which does not meet the statutory requirements for a licensee?

2. Are those persons who, when the corporate veil is lifted, compose the applicant corporation, such persons as who do not meet the statutory requirements as the officers, directors or stockholders of a licensee corporation?

3. Were these persons purposely concealing pertinent facts of ownership from the Commission or did they make an honest mistake of judgment?

762 4. Was the service rendered by station WORL under the direction of the stockholders, officers and directors of the licensee corporation, not in the public interest?

5. Would a continuation of the service rendered by station WORL be in the public interest?

ARGUMENT

IS THE LICENSEE CORPORATION PER SE AN ENTITY WHICH DOES NOT MEET THE STATUTORY REQUIREMENTS FOR A LICENSEE?

The applicant corporation herein is a corporation duly organized under the laws of the Commonwealth of Massachusetts, from which State it derives its authority to

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operate a broadcast station. The authority of the applicant to operate a broadcast station has never been questioned in these proceedings before the Commission, nor at any time in the past.

The applicant fully complies with Sections 310 and 311 of the Communications Act of 1934, as amended (47 U. S. C., Sec. 310, 311), inasmuch as no officer, director or stockholder of the corporation is an alien. No officer, director or stockholder of the corporation is a representative of a foreign government. None of the stock of the licensee corporation is held by a corporation.

Financial statements of the applicant corporation filed in connection with the present proceedings show, without a doubt, that the corporation is financially sound and is financially capable of continuing the operation of station WORL.

Statements showing profit and loss of the operation of station WORL by the applicant show conclusively that the operation of station WORL at present and for the past several years has been successful from a financial viewpoint.

There is nothing in the record which in any wise reflects on the financial inability of the applicant to continue the operation of station WORL.

There is not one scintilla of evidence in the record concerning faulty technical operation of station WORL. It must, therefore, be assumed that the applicant cor-
763 poration has employed qualified technicians to adequately take care of the technical operation of the station; consequently, there can be no question raised but that the applicant is legally, technically and financially qualified to operate station WORL and to continue its operation in the public interest.

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ARE THOSE PERSONS WHO, WHEN THE CORPORATE VEIL IS LIFTED, COMPOSE THE APPLICANT CORPORATION, SUCH PERSONS WHO DO NOT MEET THE STATUTORY REQUIREMENTS AS THE OFFICERS, DIRECTORS OR STOCKHOLDERS OF A LICENSEE CORPORATION?

The officers, directors and stockholders of the applicant corporation are admittedly all citizens of the United States. Harold A. Lafount is a former Commissioner of the Federal Radio Commission where he served with distinction. Since he left the Federal Radio Commission, he has been very active in the radio field and has been one of the leaders of the radio industry. He has held numerous offices and has been on the Board of Directors of a number of broadcasting stations during the past ten to twelve years.

Sanford Cohen and George Cohen are attorneys at law with offices in the City of New York where they have engaged in the practice of law for a number of years. Their reputations as members of the Bar for many years are unblemished. They, too, as attorneys for Mr. Arde Bulova, Chairman of the Board of Bulova Watch Company, have been more or less associated with broadcasting for the past ten or twelve years. Not one scintilla of evidence is contained in the record from any impartial witness which places a blemish on the reputations of either Lafount, Sanford Cohen or George Cohen.

Robert H. Davison is an attorney at law in the City of Boston. He likewise demands the respect and admiration of his fellow members of the Bar and nothing is contained in the record of these proceedings which in any wise reflects on his reputation.

Inasmuch as these persons are all citizens of the United States, are above average intelligence, have led useful lives as citizens of the United States and are financially qualified, there is no reason why they are in any wise dis-
764 qualified under the Statute from being officers, directors or stockholders of the licensee corporation.

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WERE THESE PERSONS PURPOSELY CONCEALING PERTINENT FACTS OF OWNERSHIP FROM THE COMMISSION OR DID THEY MAKE AN HONEST MISTAKE OF JUDGMENT?

On the record, the decision of the Commission can fairly be written in only one vein:

Namely, that the persons who testified at the hearing and who are now the officers, directors and stockholders of the applicant corporation were truthfully disclosing to the Commission the facts and that there has been no wilful failure to disclose any information to the Commission or purposeful refusal to file application for transfer of control.

However, the proposed decision has been written upon an assumption not supported by the record—namely, that there has not been a truthful disclosure of the facts, the testimony at the hearing was false and the parties purposely, over a number of years, have been endeavoring to mislead the Commission in connection with their holdings in the applicant corporation.

There is every reason to believe that the persons participating in the hearing were endeavoring to and did honestly and truthfully disclose to the Commission such facts concerning the ownership of station WORL as was within their power and memories to do so.

A witness is presumed to speak the truth unless his testimony is overwhelmingly contradicted by other witnesses or there is some motive which would make him attempt to color his testimony.

It is very unfortunate that this case should follow so closely the WOKO case (decided, March 27, 1945) because it would appear in the present instance that the Commission has attempted to parallel its reasoning used in the WOKO case to the present case.

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We submit that the two cases are easily distinguishable. In the WOKO case it was obviously an intent on the part of Pickard to conceal his stock interest in the station. There was also uncontradicted evidence showing the motive behind his concealment. This concealment began so that his employers, Columbia Broadcasting System, would
765 not be aware of his manipulation in the station ownership field and continued for such a lengthy period that Pickard was placed in a position where he could not extricate himself and disclose his ownership to the Commission.

In the present case, however, there is no wilful failure to disclose required information and there are no extenuating circumstances which would require secrecy on the part of either Lafount or the Cohens. They had no reason for withholding any stock interest they might have had in Broadcasting Service Organization, Inc. from their employer and client, Arde Bulova, who was apprised of their venture, or from the Commission.

If they had been persons of questionable character or if they had been persons who were precluded from being stockholders of the corporation because of statutory restrictions or rules of the Commission, some intent could be attributed to them for purposely concealing from the Commission their stock ownership and coloring their testimony at the hearing.

If they had been operators of a large number of broadcast stations or had held large blocks of stock in a great number of stations, intent might be implied that for some vague reason they did not desire the Commission to know of their acquisition of additional radio properties. Certainly, there are no facts in this record which show that there should have been any intent on their part to conceal their interests from the Commission because of any of the foregoing reasons.

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The only other reason from which a motive might be attributed to conceal their stock ownership is that such a report might have involved a transfer of control. This might be considered as a valid reason if the Commission in the past had maintained a practice of consistently denying applications involving transfer of control or the securing of approval for transfer of control from the Commission, involved long, tedious and arduous procedure. The records of the Commission will show, however, that to obtain consent to transfer the control of a licensee corporation has in the past been a comparatively easy matter.

The Commission in the matter of Powel Crosley, Jr., transferor, and The Aviation Corporation, transferee, Docket 6767 (decided Sept. 6, 1945) stated that it could not deny a transfer to The Aviation Corporation
766 without revising, "17 years of precedent and establish new policies." Thus, the reasons for concealing any ownership from the Commission which might have affected the action of Lafount and the Cohens have been exhausted without any motive becoming apparent. It must, therefore, be presumed that the testimony given by these witnesses was true and correct and was not colored by any selfish motive.

If this be the case, it is obvious that the actions of these persons were predicated upon the reasons set forth in the record, namely, that the stock purchased by the Cohens was not reported to the Commission for the simple reason that the Cohens understood that the persons from whom the stock was purchased (Nordblom) was dissatisfied with the transaction; that there was litigation in the Massachusetts courts which might involve the stock and that the Cohens did not desire to have the stock appear in their names and did not consider that the sale had been fully consummated until the aforementioned matters had been straightened out. The fact that Crockwell wrote Lafount early in 1939 advising that J. A. Hines, attorney for

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Natalie Whitwell, claimed all the stock of the corporation for Mrs. Whitwell, and that later Hines himself wrote Lafount demanding all of the stock on behalf of his client of itself was ample reason for the Cohens not claiming title to the stock until 1943.

Naturally, since the Cohens themselves disavowed any property interest in the stock, direct or indirect, and considered that the stock certificates endorsed in blank held by them were merely held as collateral security for the $4,500.00 paid Nordblom until such time as the dissatisfaction cleared up and title vested in them, any reports filed with the Commission would be filed in such a manner as to show Nordblom as still being the owner of this stock. The record of this case clearly shows that Nordblom exercised all of the prerogatives of the owner of the stock from 1937 to 1943, and that the Cohens did not assert any beneficial interest in the stock.

It must be remembered that the stock purchased by Mr. Lafount was reported to the Commission shortly after the purchase had been made; that the Commission at all times since then has known him to be owner of
767 the stock and the guiding head under the direction of the applicant's Board of Directors of the operation of station WORL. No effort has been made by him to conceal his participation in the operation of this station; therefore, when the testimony in the record is considered in the light that the persons testifying were telling the truth, the strongest accusation which can be directed towards these men is that they made a mistake in judgment by not reporting their acquisition of stock to the Commission regardless of the fact that other problems concerning its ownership were being raised by various parties.[1] The facts of the instant case more closely parallel

[1] Appendix 1 attached hereto contains a summary of some of the testimony in the record which establishes beyond question that the Cohens' refusal to assert a property interest in the 300 shares, and the failure of the applicant to report such an interest, was in good faith and without any intent or purpose of deceiving the Commission as to ownership.

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those *In Re KFNF, Inc.* for renewal of license (Docket 5942, decided September 19, 1945) than *In Re WOKO, Inc.* (Docket 6846, decided March 27, 1945) and the same conclusions are properly applicable to a grant of the WORL renewal as were drawn in granting the KFNF renewal. In the *KFNF* case, the Commission found that:

> "The agreements with Kaufman and the actual conduct of the parties pursuant thereto constituted a transfer of control of KFNF from Field to Kaufman in violation of the Communications Act. Not only did the parties fail to obtain the consent of the Commission as required by law but also they failed to file copies of the agreements as required by the Commission's Rules. As a result, the fact that an illegal transfer of control had occurred was for a time concealed from the Commission."

It also found that Iowa Broadcasting Company had an option to acquire KFNF for the purpose of deleting the station from the air which was not reported to the Commission, and that this option involved trafficking in licenses which would not be approved by the Commission. However, despite these facts, it was concluded that:

> "The Commission, in the performance of its regulatory functions, must be in position to rely on licensees and their responsible officers to provide full and complete information in accordance with the applicable rules. The illegal transfer of KFNF to Kaufman, and the failure of KFNF to report its agreements with Kaufman and its subsequent agree-
> 768 ments with Cowles would justify a refusal to renew its license. And we would propose to take such action if we believed that the licensee had wilfully disregarded its obligations under the law and the regulations and had attempted to deceive the Commission. However, on the whole record before us,

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we are persuaded that this is not such a case. While ignorance of the law and applicable regulations is no excuse for a failure to comply, we believe that in exercising our licensing functions we may properly take into consideration the motivation underlying violations which have occurred. Certainly, a wilful violation by a licensee of his statutory responsibility coupled with an affirmative intent to deceive the Commission tends more strongly to establish his disqualification to continue to hold a license, than does a violation resulting from ignorance where there was no intent to deceive. . . . While the licensee's omissions with respect to these matters are serious, we conclude that there was no deliberate attempt on the part of the licensee to deceive the Commission."

Having also concluded that the applicant was technically and financially qualified and that its program service is in the public interest, the KFNF application for renewal of license was therefore granted.

In this case, as in KFNF, there is no evidence of bad faith or deliberate intent to deceive, nor is there evidence of any motive or underlying purpose for deceiving the Commission. Any mistakes which have been made were errors of judgment for which the license should not now be taken away, especially in view of the fine record of public service WORL has made.

The Commission in its decision states that a violation of section 310 (b) of the Act has been committed by the parties herein. It is submitted that, considered in the light of present day practice of the Commission, had the purchase of Lafount's stock, together with the Cohen's stock, been all in one transaction and the parties had acted in concert, that possibly an application for transfer of control should be filed; however, nine years ago the Commis-

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sion was not as particular in requiring applications for transfer of control to be filed as they now are. In other words, the practice of requiring formal approval of transfer of control is a policy of the Commission which has grown consistently since the Federal Communications Commission came into existence. As an example the Commission has not always considered the fact that a
769 man and wife both owning stock in one corporation should be considered as a unit when control is taken into consideration.

In connection with the present station, the Commission records will show that in 1936, Robert C. Nordblom, who prior to that time had had no connection whatever with Broadcasting Service Organization, Inc., purchased 50% of the authorized voting stock of the licensee corporation, was elected president and a director of the corporation and although the report of this stock purchase was timely made to the Commission, no request was ever made to the applicant corporation that an application for transfer of control should be filed and formal approval thereof be received from the Commission. Likewise, the Commission records show that on October 26, 1938, a report was made that Sanford Cohen had purchased 200 shares of B stock; so that from October 26, 1938 on, the Commission had full notice that Lafount and Cohen together held 60% of the voting stock of the licensee corporation. Again, no request was ever made to the licensee that application be filed for transfer of control. In neither of these instances has any contention ever been made on the part of the Commission that a violation of section 310 (b) of the Communications Act had occurred. It seems unjust that now at this time the Commission should endeavor to apply its present policies and theories with reference to control of a licensee corporation to acts which were consummated before such present day policies had been formulated.

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For the purpose of argument, even assuming that the transaction of 1937 wherein Lafount obtained 400 shares of the voting stock of the corporation and the Cohens paid for 300 shares of voting stock, had been done in concert, the Commission in the past has had other cases where technical violations of section 310 (b) have occurred and has excused the said violators when it was shown that the infraction was not committed in bad faith (Federated Publications, Inc., (WELL), 9 FCC 150, 156, KFNF, Inc., supra).

770 WAS THE SERVICE RENDERED BY STATION WORL UNDER THE DIRECTION OF THE STOCKHOLDERS, OFFICERS AND DIRECTORS OF THE LICENSEE CORPORATION NOT IN THE PUBLIC INTEREST?

As has heretofore been pointed out in the exceptions filed with reference to this matter, the Commission apparently in deciding this case did not take into consideration the service now being rendered in the Boston area by station WORL. The record shows that under the leadership of the present officers, directors and stockholders of the station, the weekly billings on the station have increased from $904.00 when they took over the station to $6,200.00 at the time the hearing was held.

The record also shows that a survey of the Boston listeners made by an outstanding impartial national listener survey authority discloses that under the direction of Mr. Lafount, the station's rating has consistently risen year by year so that WORL is in a tie for first place with other Boston stations during the daytime. This conclusively shows that the station must be broadcasting programs that are attractive to a large segment of the Boston population.

As an evidence that the station is not operated entirely for profit, the record in the present proceedings shows

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that free time is regularly donated to at least 70 outstanding local and national organizations for public service programs and that regular periods of time are donated to numerous governmental agencies.

The Commission apparently did not take into consideration that the station has been the recipient of The McNinch Award for the public service which it has rendered.

No testimony was placed in the record which disputes the fact that station WORL, a daytime station, is rendering a meritorious service to the Boston area. This meritorious service did not come about by itself but necessarily had to be brought about through the efforts of the present owners of the station.

It is submitted that any mistake in judgment which might have been made by the present owners of the station should be carefully weighed against the service which station WORL is rendering to the Boston area
771 under their direction and leadership. The Commission's proposed decision makes reference to the Mayflower case (8 FCC 333) wherein on page 341 appears the following:

> "Replying upon these comprehensive and unequivocal representations as to the future conduct of the station *and in view of the loss of service to the public involved in the deletion of the station, it has been concluded to grant the application for renewal.*" (Italics ours)

Would a Continuation of the Service Rendered By Station WORL Be In the Public Interest?

As has been shown above, station WORL under the leadership of Mr. Lafount has risen from an obscure position in the Boston broadcast picture to a position where

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it is now tied for first place with the other Boston stations insofar as listener attraction is concerned.

When considered that station WORL is but a daytime station competing with the programs of Boston network stations for listener attention, this rise is indeed phenominal and it is submitted that the deletion of this station from the Boston area is too severe a punishment for mistakes made in the distant past by its present owners. Any deletion of the station will not only be punishing its owners but it will also be penalizing that large segment of the Boston population which listens to the station in preference to the larger Boston stations.

While it is vigorously contended in this case that there was no effort on the part of Mr. Lafount or the Messrs. Cohen to conceal information from the Commission; that insofar as they are concerned, they have dealt with the Commission honestly and with candor, it is believed advisable to refresh the Commission's recollection concerning certain other cases which have been considered by it in the past where in the light of admitted falsehoods, concealment, perjury and deception which had been practiced by various parties concerned, their derelictions were overlooked by the Commission and no punishment whatever was meted out.

It is submitted that although the Commission professes not to be bound by the doctine of stare decisis, there
772 has been a noticeable trend on its part recently to rely upon past decisions as precedents for its action. In the present case, citations to several cases are included in its preliminary decision.

The cases cited in the proposed decision are not pertinent nor in point with the present case inasmuch as all but one (in re Honolulu Broadcasting Co., 5 FCC, 623, decided June 22, 1938) deal with deliberate concealment and false dealings with the Commission. The Honolulu Broad-

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casting case is to be distinguished from this case in that the former involves gross negligence in failing to investigate statutory requirements, whereas the latter involves at most a mistake in judgment and interpretation as to statutory requirements. Any omissions or failures to report in this case are shown by the evidence to have been due solely to misunderstanding and not due to gross negligence. Moreover, it is to be noted that in the Honolulu case cited, after finding that,

> "The failure of the applicants to secure the Commission's consent to the transfer of control of the Honolulu Broadcasting Company, Ltd., under the contract of sale of June 27, 1935, between J. L. P. Robinson and the Pacific Theatres and Supply Company, Ltd., constituted a violation of Section 310 (b) of the Communications Act of 1934 and of Commission Rule 103.18."

the Commission nevertheless granted the applications for renewal of license of stations KGMB and KHBC upon a finding that the public interest had not been adversely affected by the transaction and that under the new ownership, the two stations had been materially improved and were rendering meritorious broadcast service. In the instant case, there is no evidence that the public interest has been adversely affected by the present ownership; but on the contrary, as above indicated, the record shows that since 1937, WORL has steadily improved in every respect, and is today rendering a highly meritorious program service in the public interest.

In the case in re Panama City Broadcasting Company (WDLP, 9 FCC, 208, decided December 2, 1942) after
733 a recitation of facts containing unparalled instances of concealment, perjury and deception, the Commission found inter alia:

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> "In this case, however, the showing that the station was rendering an outstanding public service was so overwhelming . . ."

that a grant of its renewal was made. Likewise in the Ocala Broadcasting Company case (9 FCC, 223, decided December 2, 1942) dealing with the same parties under practically the same conditions, the Commission in its decision stated,

> "The evidence that the respondent's station WTMC was rendering a service that was eminently satisfactory to its listening audience is so overwhelming that the Commission is inclined to give full credit to the evidence."

The Commission on another occasion has even condoned perjury (Puerto Rico Advertising, et al., 9 FCC 181, 183, 186, decided August 4, 1942).

In re revocation of license of Navaro Broadcasting Association (8 FCC 198, 200, decided September 5, 1940) wherein it was proven beyond doubt that in securing the construction permit and subsequent license, there had been misrepresentation made to the Commission,

> "As to the financing, construction, control and operation of the station in securing their original construction permit and station license."

The Commission held,

> "To revoke their license at this time would deprive the community of the service of this station when there is no reason to believe that the respondents will not continue to operate it in the public interest. From their conduct since 1937 and from their good reputation in their community, the Commission feels that the respondents may be trusted with the public responsibilities contained in an authorization to continue to operate station KAND."

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774 The foregoing does not in the least exhaust the cases[1] in which, notwithstanding the fact those representing the licensee admitted to the Commission that they had misrepresented pertinent facts, had concealed pertinent facts, had either perjured themselves or had violated the Commission's Rules and Regulations and the provisions of the Communications Act of 1934, and in spite of these admissions, the Commission took no punitive action; therefore, it would appear that in the present case, the penalty proposed to be imposed upon the present owners of WORL is much too severe, particularly since there was no proven wrong doing on the part of these persons and their protestations of innocence.

In view of the foregoing, it is respectfully submitted that when the Commission issues its final order with reference to this matter, a grant of the renewal application of WORL should be made.

Respectfully submitted,

BROADCASTING SERVICE ORGANIZATION, INC.
(WORL)

Ben S. Fisher,
Charles V. Wayland,
John P. Southmayd,
Its Attorneys

By: BEN S. FISHER

Address:
902 Earle Building,
Washington 4, D. C.

Dated: November 27, 1945.

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[1] Report of Commissioner Payne in re: State Capital Broadcasting Asso., Inc. (KTBC), John Calvin Weich, William M. Keller & Bonner Frizell, d/b as Palestine Broadcasting Asso. (KNET); Red Lands Broadcasting Asso. (KRBA); East Texas Broadcasting Co. (KGKB) 8 FCC 445, decided April 10, 1940; Sam Houston Broadcasting Asso. (KSAM) 8 FCC 459, decided June 4, 1940; Eagle Broadcasting Co., Inc. (KGFI) 8 FCC 467, decided June 17, 1940. Commission decision in re: KTBC, KNET, KRBA, KSAM & KGFI 8 FCC 473, decided April 2, 1941. In re: KGKB 8 FCC 479, decided April 2, 1941. In re: The Georgia School of Technology, decided Nov. 9, 1945. In re: Buffalo Broadcasting Corp., decided September 12, 1945.

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Appendix 1 to Memorandum Brief

775 EXTRACTS FROM HEARING RECORD ON FAILURE TO REPORT 300 SHARES

TESTIMONY OF HAROLD A. LAFOUNT

Page 43, line 4.

By Mr. Fisher:

Q. Then, again, in 1941, that would be almost two years later, did you receive a letter from Mr. Hines, counsel for Mrs. Whitwell?

A. That is right.

Page 118, line 18.

Cross examination by Shuebruk:

Q. When did the trouble which you say arose in connection with Mr. Nordblom develop? At what time was that?

A. Well, it was rather soon. I think the following day I was told by Mr. Crockwell that Mr. Nordblom was dissatisfied.

Q. The following day following what?

A. March 25.

Page 139, line 112.

Cross examination by Shuebruk:

Q. You saw him once in a while, and what did you do to try to compose your difficulties? Did you discuss any price with him?

A. No, sir; I did not. I talked with Mr. Nordblom and asked him if he was ready yet to say he was satisfied, and he said No.

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Q. When was this?
A. Oh, during 1938.

Page 145, line 20, to page 146.

Cross examination by Shuebruk:

Q. It was part of the arrangement for the transfer of the 700 shares that the old officers resigned, that the transfers be cancelled, that the preferred stock which had the higher rights in terms of liquidating value and dividend rights, be reduced considerably. Those things were all a part of the transaction.

A. For the 400 shares.

Q. They were required to be done by you?

776 A. By me for the 400 shares. Likewise, it was required that the debts be paid off.

Q. Now, in the case of the transfer of less than a controlling interest, is it customary to go to those elaborate precautions?

A. When you are buying an institution that is bankrupt and is as badly involved as that was, yes, sir.

Q. By buying an institution, what do you mean?

A. Buying an interest in an institution that is practically bankrupt.

Q. A minority interest, not controlling.

A. A minority, by money, was saving the institution.

Q. When the old officers and directors resigned, you became president?

A. Yes, sir.

Page 147, line 6.

Cross examination by Shuebruk:

Q. You own 400 shares and vote those 400 as well as the additional 300 that were in Nordblom's name?

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A. Oh, no, I did not vote them. Mr. Nordblom voted for those shares, his shares.

Page 219, line 3.

Cross examination by Shuebruk:

Q. What prevented the issuance of a new certificate to replace the old certificate issued in Mr. Nordblom's name and endorsed, a transfer by him?

A. The fact that the parties I had purchased the stock for objected to taking it as long as there was any question as to its title.

Q. You mean they refused to have the stock transferred to him?

A. They did, and I thought it was likewise unwise.

777 TESTIMONY OF SANFORD H. COHEN

Page 290, line 22 to page 291, line 10.

By Mr. Fisher:

A. Then in 1939, Mr. Lafount got a letter from Mr. Crockwell in which he told about the fact that a Miss Whitwell was making claims in connection with the stock and claimed that Mr. Lafount knew this A stock belonged to her, and also made claims that this attorney, a man by the name of Hines, was very well connected politically and knew everybody in Washington and was going to the Department of Justice and was going to the Federal Communications Commission. He mentioned so many departments, you would probably get dizzy following him around to all the departments he said he was going to. That, added to what had already been indicated about Nordblom's dissatisfaction, further led me to believe that I wanted to keep my name out of that thing until everything was cleared up.

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Page 326, line 18 to page 327, line 19.

Cross examination by Mr. Marks:

Q. As you said, this was a thousand shares of A stock which was valued at $44,000 after Mr. Lafount came in. It was scaled down from 100 to 44 thousand.

A. That was one of the things mentioned by Mr. Hines. As you read the whole testimony, you will see the claim that the whole transaction, even before we get into the deal—you will see where he speaks of money being extracted from Vault by Crockwell. May I add this?

Q. Yes.

A. I may have been wrong in my judgment in not reporting the 300 shares, or in not making the transfer in my name. It may have been poor judgment. Perhaps now I would change that situation. I don't say I am right, but I say if it was a mistake, it was a mistake that was not in bad faith. I had no desire to have my name on the stock and have lawsuits against it.

778 Q. If you had reported the 300 shares with the 400 shares of Mr. Lafount's, that would have shown the Commission that a majority of the stock had been transferred on that occasion.

A. Well, yes; but it learned later. It learned later that it was 400 and 200. In 1938 the Commission knew Mr. Lafount had 400 and I had 200. The most it would have learned the year before is that I had 300 instead of 200, or that my brother had 100 and I had 200. I am not trying to argue; I am trying to set the facts.

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839 **Final Decision**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

B-223

Docket No. 6626

File No. B1-R-205

In re Application of

BROADCASTING SERVICE ORGANIZATION, INC. (WORL)
BOSTON, MASSACHUSETTS

For Renewal of License

APPEARANCES

BEN S. FISHER and CHARLES B .WAYLAND, on behalf of the applicant; LEONARD H. MARKS, PETER SHUEBRUK, and J. ALFRED GUEST, on behalf of the Commission.

DECISION

BY THE COMMISSION (Commissioners Walkers, Hyde and Webster, not participating; Commissioner Jett dissenting):

PRELIMINARY STATEMENT

1. This proceeding arose upon the application of Broadcasting Service Organization, Inc., hereinafter referred

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to as the applicant or corporation, for renewal of license (Main and Auxiliary) to operate Station WORL at Boston, Massachusetts, on 950 kc, with power of 1 kw (500 watts for the Auxiliary), daytime. Hearings were held on September 22 and 23, October 18, November 20, and December 5, 1944, before a presiding officer duly appointed by the Commission to determine whether public interest, convenience and necessity will be served by a grant of the application. A proposed decision proposing denial of the application was adopted by the Commission on October 24, 1945. Oral argument was held before the Commission on January 24, 1946. The principal issues on which the hearing was initially held relate to the qualifications and fitness of the applicant and its principals to continue the operation of the station and were:

(a) Whether the license granted to the applicant corporation, or the rights or responsibilities incident thereto, have been in any manner, either directly or indirectly, transferred, assigned, or disposed of without the consent of the Commission, as provided by the Communications Act of 1934, as amended, and particularly Section 310(b) thereof.

(b) Whether all contracts and agreements which have been entered into by the applicant's officers, directors, stockholders and/or agents, relative to the sale and transfer of the stock of the applicant corporation, have been reported to the Commission as required by its Rules and Regulations.

840 (c) Whether the statements and representations made in the various applications, documents, and reports required of and filed with the Commission on behalf of the applicant by its officers, directors, and/or agents, have fully and accurately reflected the facts concerning the ownership and distribution of the stock of the company.

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(d) Whether the applicant's officers, directors, stockholders, and/or agents, or any of them, have made false statements and representations to the Commission as to ownership, transfer, and/or control of the stock of the applicant.

Findings of Fact*

2. The applicant, a Massachusetts Corporation, is the licensee of Station WORL, Boston, Massachusetss. Its authorized capital stock, all of which is outstanding, consists of 1000 shares of nonvoting Class A preferred and licensee of Station WORL, Boston, Massachusetts. Its officers, directors and stockholders as of the date of hearing were and still are:

Name	*Office*	*A Stock*	*B Stock (voting)*
Harold A. Lafount	Director — President	1000 — 100%	400 40%
Sanford H. Cohen	Director	— —	400 40%
George Cohen	— Treasurer	—	200 20%
Robert H. Davison	Director — Clerk (Secretary)	—	—

3. Sanford H. Cohen and his brother, George, have been practicing law since 1911 and have been law partners since 1920. Sanford H. Cohen was admitted to practice before this Commission about 1940. Both have had considerable experience in corporate law and for 15 years have represented the Bulova Watch Company and its principal stockholder, Arde Bulova. For years Sanford Cohen has had power of attorney from Bulova to sign checks and also entrusted at times with the management of Mr. Bulova's investments in radio, amounting to

* For the purposes of clarity, the findings of fact made in the Commission's Proposed Decision of October 24, 1945 have been recast in chronological order. In substance, the same findings of fact are made.

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approximately $2,000,000. The Cobens have also been Bulova's general counsel in connection with his acquisition of radio stations, which have included Stations WCOP, WPEN, WNBC, WOV, WELI and WNEW.

Harold A. Lafount has been a successful business man. From 1927 to 1934, he was a member of the Federal Radio Commission. From 1934 on, he has been in charge of all of Bulova's radio interests and has supervised the investment of about $2,000,000 in radio stations. Even prior to his connection with Bulova, he had investments
841 in his own right of over $1,500,000.

Robert H. Davison is an attorney at law with offices in Boston. He has been the applicant's local counsel, director and clerk since these stockholders first acquired an interest therein.

4. For some time prior to March 25, 1937, ownership of the capital stock of the applicant was vested as follows:

Stockholder	*A Stock*	*B. Stock (voting)*
George A. Crockwell	400	200
James K. Phelan	300	150
William H. Eynon	300	150
Robert C. Nordblom	—	500

5. On March 16, 1937, Crockwell and Nordblom entered into an agreement with their co-stockholders, Eynon and Phelan (hereinafter referred to as the stockholders' agreement), providing—whereas Eynon and Phelan each then owned 300 shares of Class A stock and 150 shares of Class B stock, and whereas Crockwell and Nordblom were about to enter into a contract with Lafount for the sale of 700 shares of B stock for $52,500; that therefore, Eynon and Phelan, in consideration of the payment of $2,500 each ($5,000 in all) to them from the proceeds of the sale to Lafount, agreed to deliver to Crockwell their aforemen-

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tioned A and B stock duly endorsed for transfer and submit to the corporation their resignations as officers, directors, and employees. On their part Crockwell and Nordblom agreed to apply the $52,500 to the discharge of this $5,000 and all corporate obligations, "except certain * * * obligations as specified in the agreement with Lafount" and distribute the balance then remaining, 62½% to Crockwell and 37½% to Nordblom; in the event the corporate debts exceeded $38,000, then Nordblom was to assume the excess up to $1,500. Crockwell also agreed therein to resign as officer and director. The agreement concluded with a provision that if the proposed agreement between Crockwell, Nordblom and Lafount be not entered into on or before March 23, 1937, then this agreement shall be void.[1]

6. On the same day, March 16, 1937, Crockwell, Nordblom and Lafount entered into an agreement which provided: That in consideration of Lafount's payment of $48,000, Crockwell and Nordblom agreed (a) to transfer to Lafount 400 shares of Class B stock of which Crockwell was to supply 300 and Nordblom 100 shares; (b) to cause the payment of all obligations of the corporation (with several named exceptions) out of said $48,000; (c) to cause the liquidating value of the A stock to be reduced from $100 to $44 per share, and annual dividends thereon reduced pro-tanto from $5.00 to $2.20; and (d) to cause
842 a change in the by-laws so as to provide that 50% of net earnings after the payment of $6.00 annual dividends on Class B stock would be applied to the liquidation of A stock. The closing of this contract was set for March 25, 1937.

7. On March 25, 1937, Nordblom, Crockwell, Phelan, Eynon, Lafount, and Ben S. Fisher (attorney for the

[1] At the foot of this agreement appear subsequently appended receipts signed by Eynon and Phelan wherein each acknowledged the payment of $2500 and full satisfaction of this agreement.

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Cohens and Lafount) met at the office of Robert H. Davison (local attorney for WORL, Nordblom, Crockwell, Phelan and Eynon) and proceeded to close their several agreements and understandings. Lafount gave Davison a cashier's check dated March 24, 1937, in the sum of $52,500 of which $48,000 was to cover the sale and transfer of 400 shares of Class B stock to Lafount pursuant to his contract of March 16, 1937, and the balance of $4,500 was to cover the sale and transfer of another 300 shares of Class B from Nordblom to the Cohens. To evidence this latter transaction a separate writing was agreed upon. The Cohens being absent from the meeting, Lafount requested Fisher to act as their agent. Accordingly "Ben S. Fisher, Agent" was a party to a written agreement dated March 25, 1937, with Robert C. Nordblom wherein the former agreed to buy and the latter to assign, transfer and deliver to Fisher 300 shares of Class B stock for $4,500, with performance to take place the same day. Upon Lafount's instructions two new certificates for 400 and 300 shares respectively were forthwith issued from a temporary stock certificate book and delivered to Lafount. The larger was in Lafount's name. The smaller, however, as a convenience to the Cohens, was issued in Nordblom's name, immediately indorsed in blank by him, and delivered to Lafount for the Cohens.

8. Eynon and Phelan performed their covenants of March 16 by supplying 300 of these 400 shares (they also assigned 600 shares of Class A stock to Crockwell as agreed) and resigned all offices in the corporation. Crockwell also resigned. From the $52,500 received by him Davison paid Eynon and Phelan $2,500 each and retained the balance in escrow (a) to pay corporate creditors all obligations described in the two agreements of March 16, 1937, and (b) to distribute the remainder as provided in the stockholders' agreement of March 16, viz., 62½% to Crockwell and 37½% to Nordblom.

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9. As a result of the transfers on March 25, 1937, ownership and control of the voting stock in the applicant became vested as follows:

Name	*No. of Shares*	*Percentage*
Lafount	400	40
S. H. Cohen	200	20
Geo. Cohen	100	10
Nordblom	100	10
Crockwell	200	20

And correspondingly there resulted a voluntary transfer to and acquisition by Lafount and the Cohens (as owners of 70%) of legal and physical control of Station WORL, its facilities, license, and frequency.

843 10. On March 25, 1937, with the transfer of the 700 shares, the old officers and directors resigned and new officers and directors were elected as follows:

Harold A. Lafount — Director — President
Robert C. Nordblom — Director
Ben S. Fisher — Director
Helen Rose — — — Treasurer
Robert H. Davison — — — Clerk

Mr. Fisher was Washington radio counsel for Lafount and the Cohens. Helen Rose was the secretary of Sanford Cohen. Mr. Davison, while representing the sellers at the closing was also representing Lafount and the Cohens as their local attorney, a relationship which has continued until now. Mr. Nordblom was still a stockholder of 100 shares of voting stock having that day disposed of but 400 out of 500 shares previously held by him.

Lafount forthwith took over and at all times since he has been in control of the station and its policies for himself and the Cohens.

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11. The Board of Directors, since control was surrendered by the old stockholders, has been composed as follows: From March 25, 1937—Lafount, Fisher, Nordblom; from April 29, 1937—Lafount, Davison, Nordblom; from March 18, 1941, on—Lafount, Davison, S. H. Cohen.

12. Six days later, on March 31, 1937, applicant filed a verified statement executed by an officer, Davison, reporting the transfer of 400 shares of B stock to Lafount for $30,000. No mention was made of the transfer of the other 300 shares. In the covering letter, it was stated that the report shows "a change in ownership of a minority of the stock of this corporation." At this same time the applicant also reported the transfer of March 25, 1937, of 600 shares of Class A stock from Eynon and Phelan to Crockwell for a consideration of $26,400. The contract of March 16, 1937, described in paragraph 5, above, pursuant to which these shares were sold, specified a consideration of $2,500 each or $5,000 in all. Introduced in evidence were receipts signed by the latter acknowledging payment of $2,500 each. The consideration of $26,400 reported to the Commission, therefore exceeds by $19,400 the sum actually paid the transferors.

13. The new certificates for 400 and 300 shares given to Lafount on March 25, 1937, for himself and the Cohens, respectively, were as heretofore stated, from a temporary certificate book. They were replaced on April 27, 1937, by permanent certificates in the same tenor. The new certificate for 300 shares was again issued in Nordblom's name, endorsed by him in blank and given to Lafount for delivery to the Cohens. Sanford H. Cohen took possession thereof on about May 1, 1937, and held it until November 27, 1943, a period in excess of six years, at which time he surrendered it for issuance of new certificates to cover a distribution

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originally agreed upon, namely 200 shares to Sanford
844 H. Cohen and 100 shares to George Cohen. Then, for the first time, the applicant reported to the Commission the transfer of these 300 shares and in the report, November 27, 1943, rather than March 25, 1937, was given as the date of transfer by Nordblom. During the interim the stock was voted by the record holder, Nordblom. The latter testified that this was solely for the convenience of the Cohens; that he had no pecuniary or proprietary interest in this stock.

14. On July 12, 1937, at Lafount's request and personal assurance of payment, Bulova loaned Crockwell $5,000 on a six months note secured by two certificates covering 200 shares of B stock then standing in the latter's name. The debt was dishonored and on July 28, 1938, the security was foreclosed at public auction. Davison with a bid of $100 advanced by Lafount purchased the stock in Bulova's name. On September 30, 1938, Bulova delivered to Sanford H. Cohen the certificates so purchased with a separate assignment reading: "I, having heretofore purchased Certificate B1 for 100 shares and Certificate B2 for 100 shares of Class B . . . heretofore owned . . . by . . . Crockwell do . . . sell, assign, and transfer to (S. H. Cohen) all my right, title and interest to the said shares of stock and direct the entry of this transfer upon the books of the corporation and the issuance of a stock certificate . . . to (S. H. Cohen)." Sanford Cohen settled with Lafount for the $100 advance and paid Bulova the entire $5,000 debt thus bringing his cost in acquiring these shares to $5,100.

15. The transfer of the Crockwell stock to Bulova on July 28, 1938, and the Bulova to Sanford Cohen transfer on September 30, 1938, were never reported to the Commission. Instead of reporting those transfers to the Commission, Lafount on November 22, 1938, filed FCC Form 730 verified

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by him on October 26, 1938, reporting the relinquishment or sale of these 200 shares by Crockwell directly to Sanford Cohen for $100.

16. Lafount and Cohen stated that their reason for reporting the transfer in Sanford Cohen's name in the first instance rather than in Bulova's was that the purchase at auction was in fact for Cohen. They testified that prior to the auction it had been agreed that Cohen was buying in at the sale; Cohen did not attend but Davison as his attorney and agent was instructed to make the purchase in his behalf; instead of following instructions Davison made the purchase in Bulova's name; that Cohen was on vacation when the stock certificates and auctioneer's bill of sale reached his office and upon his return in September, 1938, he promptly took steps to get the stock in his own name; that the Bulova-Cohen transaction was necessary to effectuate their original intentions.

17. On March 8, 1939, 900 shares of A stock pledged by Crockwell to secure a loan from Raldne Realty Company were foreclosed at public auction. Lafount became the purchaser at $2,450. The stock was transferred on the corporate books and a new certificate issued him on March 15, 1939. Nevertheless no formal report under the rules was filed with the Commission until April 15, 1940.

845 18. On July 14, 1938, the applicant filed FCC Form 728, reporting among other data, the possession by one Lester Endlar of 100 shares of Class A stock. No formal report of the name of the transferor, the date of a consideration for transfer as required by the rules have been filed. According to the record Endlar acquired these shares from Crockwell on June 29, 1938.

19. On September 24, 1940, Endlar sold and delivered these 100 shares to Lafount for $3,100. With this purchase

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Lafount became the owner of all 1000 shares of Class A stock. Lafount held the Endlar certificate until March 31, 1941, when he caused it to be transferred on the corporate books. On May 1, 1941, Lafount reported this transaction to the Commission. In place of September 24, 1940, as the date and $3,500 as the amount he swore to March 31, 1941, as the date of transfer and $3,500 as the amount paid to and received by Endlar.

20. Lafount explained the delay in reporting the two transactions in A stock as pure oversight and regrettable neglect. He accounted for the difference between $3,100 and $3,500 as expenses incurred in connection with the 100 share transaction. These he figured into the cost. That does not explain, however, why he reported $3,500 as the "amount received" by Endlar, nor why he reported March 31, 1941, rather than September 20, 1940, as the date of transfer and acquisition. It will also be observed that in no other report filed with the Commission has the applicant included expenses as part of the consideration.

21. On September 24, 1940, Nordblom also sold, transferred and delivered his remaining 100 shares of B stock to Lafount for $1,500. Lafount testified that although purchased in his name, the deal was for the benefit and interest of George Cohen and that he forthwith turned the stock over to George Cohen who in due time repaid the $1,500. After holding these shares for three years, Cohen surrendered them for transfer on the books of the corporation and a new certificate dated November 9, 1943, was issued to him. Eight days later, on November 17, 1943, the transaction was reported to this Commission in an affidavit executed by Lafount attesting to a transfer from Nordblom to Cohen on November 9, 1943, rather than the true date of September 24, 1940.

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22. While Lafount and the Cohens purchased the various blocks of the Class B stock at various times and for different amounts, between themselves they prorated the cost of the several purchases. These adjustments began with the very first 700 shares acquired on March 25, 1937, at which time it was agreed that out of the total cost of $52,500 Lafount assume $30,000 (the amount he reported to the Commission as having spent on March 31, 1937) equal to 400/700 of the stock purchased that day, and the Cohens 300/700 or $22,500, or a price of $75 per share. Subsequent purchases at a lesser price per share brought the total price per share of Class B stock down to $59.85 per share.

846 23. In May 1943, a dispute arose between Nordblom and Lafount over the price paid for these 100 shares. This was the first time that Nordblom asserted any claim with respect to stock he had sold to Lafount and the Cohens. It related solely to dissatisfaction with the price received on September 24, 1940, for the block of 100 shares. It was finally settled on November 24, 1943, by the payment to Nordblom of an additional $750.00. Correspondence between the parties and their counsel as well as Nordblom's testimony show clearly that there was only one dispute between Nordblom and Lafount and the Cohens and it involved the 100 share transaction only. Lafount admitted he saw Nordblom on a number of occasions and that Nordblom never asserted any claim arising out of the 300 share deal. He also admitted on cross examination that the $750 settlement related solely to the 100 share transaction. The Cohens, likewise, received no complaint or claim from Nordblom.

24. On November 27, 1943, as stated above, Sanford H. Cohen surrendered the 300 shares held by him but in the name of Nordblom for transfer on the books of the corporation. At this time he caused two new certificates to be issued as follows: 200 shares to himself and 100 shares to

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his brother, George Cohen. For the first time this transaction was reported on December 2, 1943. In lieu of March 25, 1937, as the date and $4,500 as the consideration, the report gave November 27, 1943, as the date and $5,000 as the consideration.[2]

25. As a matter of law and fact, the 300 shares of B sold by Nordblom to the Cohens on March 25, 1937, and the 100 share lot which George Cohen acquired from him on September 24, 1940, became immediately the property of the Cohens. They have conceded control and ownership. Nevertheless, in every application and official form requiring disclosure of the owners of stock filed by the applicant with the Commission in the six year period following March 25, 1937, the applicant falsely represented Nordblom to be the owner. In at least nine applications Nordblom was listed as owner. On eight other occasions the applicant filed applications containing reaffirmation of all statements
847 contained in previous applications wherein Nordblom was listed as the owner. To the same effect was the statement contained in several applications that the applicant had filed all reports required by Section 43.1 of the Rules and Regulations. All were executed by Lafount under oath.

Typical of these were:

(a) Application for renewal of license filed July 16 and amended July 28, 1937.

"Q. 7(d)—Give names . . . of all stockholders owning and/or voting 10% or more of applicant's stock and percentage of stock held by each.

[2] The language of the report consisted of:

"In accordance with the Rules and Regulations of Commission, (Lafount) states that on November 27, 1943, 200 shares of Class B common stock were transferred from Robert C. Nordblom . . . to Sanford H. Cohen . . . for a total consideration of $3334, and that on November 27, 1943, 100 shares of Class B common stock . . . were transferred from Robert C. Norblom . . . to George Cohen for a total consideration of $1,666.00."

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"A. —George Crockwell— . . . 200 shares common, Harold A. Lafount . . . 400 shares common, Robert C. Nordblom 400[2] shares common."

(b) Application for construction permit filed April 1, 1940.

"Q. 9(g)— . . . Give the name of . . . all persons owning or controlling 10% or more of the voting stock for applicant corporation:

"A. —Harold A. Lafount 400 com., 40%
Robert C. Nordblom 400 com., 40%[3]
Sanford H. Cohen 200 com., 20%"

(c) An application for renewal of license filed May 18, 1942.

"Q. 7(c)—Has applicant filed the report and necessary supplemental reports required by FCC 43.1 of the Rules?

"A. —Yes."

• • • • •

"Q. 15—Applicant's last application for station license is to be considered as part of the application and the truth of the statements therein contained is hereby reaffirmed, except so far as the contrary expressly appears herein, and in the following particulars:

"A. —None."

848 (d) Statement of information on FCC Form 728 filed July 14, 1938 pursuant to the then Rule 340.01:

"Stock owned (voting)—

Robert C. Nordblom 400[4]
Harold A. Lafount 400
Crockwell 200

[3] At the time each of these applications was filed, Nordblom owned but 100 shares; 300 were owned by the Cohens.

[4] At the time this application was filed, Nordblom owned but 100 shares; 300 were owned by the Cohens.

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Lafount in his affidavit failed in any way to qualify Nordbolm's "ownership" despite the clear instructions in this form reading:

> "If stock is beneficially held by a person (natural or artificial) other than the record holder (and such beneficial owner has not been identified in reporting the voters other than record holder) state the name . . . of the person or persons empowered to designate the voter or voters of the stock, making these statements on an exhibit referred to by number in this column."

26. There was a definite oral understanding and agreement between Lafount and Nordblom that the Cohen stock be reissued in Nordblom's name and that he appear as stockholder and vote the same; that he be a director, all as a courtesy and convenience to the Cohens. The arrangement was revocable at the will of the Cohens who at all times had physical possession of the stock so voted. This condition continued from March 25, 1937, to 1943. Lafount, nevertheless, on four different occasions executed and filed with the Commission verified statements to the effect that there existed no "contracts (written or oral) or other instruments which affect or concern (1) the voting rights of any stock; (2) the ownership or control over the station or rights or interests therein." On one such report, George Cohen then an owner of part of these shares, acted as notary to Lafount's oath.

27. The applicant in 1937 filed an application with the Commission for a construction permit to increase the power and hours of operation of Radio Station WORL, the prospective cost of which was expected to reach approximately $20,000. In connection with that proceeding, Lafount submitted a financial statement for the station as of April 30, 1937, listing "Cash in banks $25,362." Cor-

porate obligations were shown at less than $700. The application went to hearing, (Docket No. 4206) and Lafount testified that the financial statement had been prepared under his direction and supervision, that it was accurate and the cash specified was available for the improvements which were contemplated.

In the present hearing, Lafount admitted the applicant had no such sum in the bank or in cash. He then stated that $25,000 of the foregoing amount was a loan from him. Upon being shown that the financial statement contained no liability or offset indicating such indebtedness, he admitted that there was only $362.11 on deposit at the time. He insisted, however, that he did have $25,000
849 available which he would have loaned to the station if the application had been granted. The applicant now contends that no reliance was then placed on the financial statement or Lafount's 1937 testimony since the application was denied. The denial of the application was solely on technical grounds of objectionable interference during nighttime hours. (Docket 4206, 7 FCC Reports 242, 246).

28. On the stand, Lafount and the Cohens gave the following reasons (a) for failing to report the transfer of these 300 shares in 1937 and (b) why, when reported, it was given as a 1943 transfer:

On March 25, 1937, the Cohens were not present at the closing and Lafount did not know how they wanted the 300 shares divided between them. He, therefore, caused the stock to be reissued in Nordblom's name thus continuing the record ownership until he ascertained from the Cohens the number each was to receive. Within a few days Crockwell advised Lafount that Nordblom was dissatisfied with this deal. The Cohens thereupon decided that since such a claim might lead to a law suit or mutual rescission, they would not take the stock in their names

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until the matter was fully settled. This was the situation on April 23, 1937, when the permanent B certificates were issued. For this reason the new permanent certificate for these 300 shares was again issued in Nordblom's name, and with his blank endorsement given to the Cohens.[5] The Nordblom situation had not yet been cleared in 1939 when a new claim was asserted, this time by a Miss Natalie A. Whitwell, who lay claim to all the A and B stock of the corporation. Her claim went to suit.[6] Later, other claims involving the corporation arose. The Cohens then persisted in keeping the stock from appearing in their names since they did not want their names involved in any of the claims or suits. By the fall of 1943, all claims had been finally disposed of. The Cohens on November 24, 1943, paid Nordblom an additional $750 in settlement of claims he had asserted with respect to both these 300 shares and another block of 100 which he had sold to George Cohen on September 24, 1940. On November 27, 1943, when Nordblom executed a general release of all claims, the Cohens thereupon permitted the transfer of these 300 shares
850 to be made on the books of the corporation with 200 shares in Sanford H. Cohen's name and 100 shares in George Cohen's name.[7] They also testified that pending the decision to take this stock in their own names, Nordblom had continued to remain the record owner and had actually voted the stock.

29. Lafount and the Cohens contended that the transfer was not fully completed until the decision of the Cohens in 1943 to accept the stock in their names; that there was,

[5] Lafount on cross examination admitted, however, that it had been agreed on March 25, 1937, to reissue these 300 shares in Nordblom's name when the permanent certificates became available.

[6] The Whitwell suit as filed was in law against the corporation for money damages rather than in equity for the stock.

[7] It is to be noted that despite the contention that only with these book transfers did the Cohens formally and legally acquire title to these shares which brought their record ownership to 600 or 60% of the voting stock, they still refrained from applying for consent to the transfer of control as required by Section 310(b) of the Act.

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therefore, no impropriety in failing previously to report the same. A similar argument is advanced for the failure to register the transfer of the 100 shares Nordblom sold to George Cohen on September 1940. They admit however that Nordblom from the moment he sold these shares never had possession or the right to dispose of the stock, but on the contrary possession and the right of disposal was at all times with the Cohens. Nordblom himself testified that the stock was retained in his name on the corporate books and voted by him solely as a convenience to the buyers, and the claim that the Cohens refused to take the original lot of 300 shares of B stock, because of dissatisfaction asserted by Nordblom in 1937 and only settled in 1943 is contradicted by the finding in paragraph 23. Moreover, although the evidence indicates that the station was increasingly profitable during the period 1937 to 1943, no dividends were paid out, but instead all profits were retained in the broadcasting company to build up that organization for the benefit of the present stockholders of record.

30. Broadcast Division Order No. 2 adopted in 1934, Rule 340.01 adopted May 11, 1938, and Rule 43.1 adopted July 12, 1939, which successively superseded each other, have required this license, within 30 days of any change in holders or beneficial owners of its corporate stock to report the same in detail and in conformity with instructions set forth in forms adopted by the Commission for the purpose.

The particulars required until May 11, 1938, were as to stock relinquished, "name of stockholder prior to transaction, . . . shares and kind of stock, . . . amount actually paid for stock, date of acquisition" and as to the transferee, "name . . . shares and kind of stock transferred or purchased, amount actually paid for stock." From May 11, 1938 on, the licensee was required to report in

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addition to the foregoing the "amount received" by the relinquishing stockholder and to "state whether or not there have been any new contracts (written or oral and not theretofore reported) relative to (1) the voting rights of any stock; (2) ownership or control over the station, or rights or interests therein. . . . "Certified copies of such contracts (oral contracts being reduced to writing), were to be attached.

851 The applicant has used the various forms promulgated under these rules and has thereby evinced familiarity with the rules and regulations. It has, however, as hereinafter indicated, failed to submit reports in due time, and in several instances, has omitted required information or given erroneous data, or both.

852 CONCLUSION

1. On March 25, 1937, Harold A. Lafount, Sanford H. Cohen, and George Cohen, acting jointly, acquired 700 shares, or 70%, of the voting stock of Broadcasting Service Organization, Inc., licensee of Station WORL, Boston, Massachusetts, and since that time these parties have jointly been in full control of Station WORL and its facilities.

2. Of the 700 shares (70%) acquired on March 25, 1937, Lafount acquired 400 shares or 40%, George Cohen, 100 shares or 10%, and Sanford Cohen, 200 shares or 20%. Subsequently, on September 30, 1938, Sanford Cohen purchased 200 additional shares, increasing his interest to 40%; on September 24, 1940, George Cohen purchased an additional 100 shares which increased his interest to 20%.

3. The applicant and its principals failed at any time to apply for consent to the transfer of control resulting from the change in ownership of the 700 shares (70%) of voting stock on March 25, 1937. They also concealed

from the Commission the fact that a transfer of the majority of the Class B voting stock had taken place at that time. They reported their other acquisitions in such manner and at such times as suited their particular purposes and convenience without regard to the true facts and the requirements of the rules and regulations of the Commission. On March 31, 1937, they filed a verified statement reporting the transfer of 400 shares (40%) of Class B stock only. Accompanying the report was a covering letter emphasizing "These reports show a change in ownership of a minority of the stock of this corporation." No report covering the transfer of the other 300 shares of Class B stock was filed until December 2, 1943, and at that time it was reported as a transfer occurring November 27, 1943. Similarly, the transfer of another block of 100 shares of Class B voting stock from Nordblom to George Cohen which occurred September 24, 1940, was concealed until November 24, 1943, when it was reported as having occurred on November 9, 1943.

4. During the six years following March 25, 1937, these principals filed under seventeen reports and applications, knowingly misrepresenting under oath that Nordblom continued to be the owner of the 300 shares of stock sold to the Cohens on that date. This "ownership" was never qualified in any way in the reports to the Commission in spite of explicit instructions that the names of any beneficial owners of any shares of stock empowered to designate the voter of the stock were to be listed in these reports. Moreover, on at least four occasions Lafount filed with the Commission statements to the effect that no written or oral contracts existed concerning the voting rights of any stock or the ownership or control over the station, or rights and interests therein, in spite of the existence of an oral agreement between Lafount and Nordblom that the stock owned by the Cohens was to be reissued in Nord-
853 blom's name, and that he was to vote the stock as a shareholder and serve as a director as a courtesy

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and convenience to the Cohens. Yet Lafount was an ex-member of the Federal Radio Commission, had extensive experience in connection with other radio stations, and was well aware of the necessity for making complete and truthful reports to the Commission. And the Cohens were both lawyers of long experience, including work in preparing applications for action by the Commission.

5. Consistency in the planned program of deception was also demonstrated in every report, six in number, filed with the Commission since July 25, 1937, in purported compliance with Rule 43.1 and its predecessors. In each the applicant gave false information as to one or more of the following details: date of sale, date of acquisition, consideration, transferor, transferee.

6. Two transfers which should have been reported to the Commission under Rule 43.1 and its predecessor, as set out above in Paragraph 30 of the Findings of Fact, were not reported, namely, (a) the transfer on July 27, 1938, of the 200 shares of Crockwell B. stock to Arde Bulova, and (b) the transfer of this number by Bulova to Sanford H. Cohen on September 30, 1938.

7. The record establishes that the applicant has submitted false reports and testimony in order to convey such impressions as it deemed expedient. In Docket 4206, a balance sheet was introduced to show that the applicant was financially qualified to pay for the improvements requested in the station facilities. This statement showed "Cash in bank—$25,362" when actually the balance on hand was only $362.11.

8. Licensees and their principals must at all times be honest and candid with the Commission. Applications and reports filed by them, on which the Commission must rely in administering the Communications Act, must be com-

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plete, truthful, and accurate. Where on the contrary a licensee or its principals conceal and misrepresent facts in the reports it submits to the Commission, a grave question arises as to whether it possesses the necessary character qualifications for a radio station licensee. In this connection, licenses are subject to revocation under Section 312 of the Communications Act for false statements made in applications to the Commission. And it has been held that the Commission may refuse to renew the license of an applicant who has willfully and knowingly misrepresented facts concerning its stock ownership in reports and applications submitted to the Commission. *Federal Communications Commission* v. *WOKO, Inc.*, 329 U. S. 223, 67 S. Ct. 213 (1946).

In that case Mr. Justice Jackson, speaking for a unanimous court stressed that it was "beside the point" whether or not the misrepresentation was material or whether the Commission would have acted differently if the true facts had been known to it. He went on to say:

854 "The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones. We do not think it is an answer to say that the deception was unnecessary and served no purpose."

In this case, however, whatever the purpose in concealing the information from the Commission may have been, it is clear that the misrepresentations were material in that they related to concealment of 40% of the stock in the applicant corporation.

9. Even if we could assume, as we cannot, that Lafount and the Cohens honestly, if mistakenly, believed that transfer of the shares of stock to the Cohens had not been com-

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pleted, in that the certificates were still made out in the name of Nordblom, there would be no excuse for the repeated and successful efforts to conceal information from the Commission as to the new status of the stock as a result of the transactions of March 25, 1937, and September 24, 1940. The Commission questionnaires, requesting information as to the beneficial ownership of any stock and as to any oral or written contracts or understandings concerning the voting rights, or ownership or control of such stock, are specifically intended to call to the attention of the Commission any transfer of an interest less than complete ownership in any shares of stock in a licensee. But the principals failed to make these required disclosures. Had they disclosed the facts, the Commission would at least have had before it information on which it could have determined whether the filing of an application for transfer of control would be required. See *Falknor and Schepp (WPAT)*, 10 F. C. C.—Docket 6521, decided November 9, 1944, in which a transfer of a license was approved, in spite of the failure of the parties to apply to the Commission for permission before the actual transfer of control was consummated, where throughout the entire course of the negotiations and dealings between the parties, the Commission was kept fully informed of developments and on several occasions was specifically asked to advise the parties as to the legality of their conduct.

10. While the purpose which may have led the principals in this case to conceal the full extent of the various stock transactions is not entirely clear, and under the ruling of Supreme Court in the *WOKO* case would, in any event, not excuse the willful misrepresentations to the Commission, some comment on the alleged purpose of the Cohens in attempting to insulate themselves from a possible law suit or law suits may be in order. As is made clear in the findings of fact, any claim that the stock was not put in the Cohen's name because of an alleged dissatisfaction on

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the part of Nordblom prior to May 1943 is not borne out by the evidence. And the claim that the fear of the possible suit against the company by Miss Whitwell led to the device of having the stock issued in the name of Nordblom and voted by him from 1937 until 1943, is at least
855 questionable in the light of the purchase of the 200 shares of stock by Sanford H. Cohen on September 30, 1938, which were issued in his name and reported to the Commission on November 22, 1938. But even if this was in fact the reason for concealment of the Cohens' interest in 400 of their 600 shares of voting stock, it would not be an excuse for the continued deception of the Commission. A licensee cannot excuse misstatement to the Commission on the ground that it was intended to deceive a third party rather than the Commission itself. Cf. *Voice of Brooklyn, Inc. et al.*, 8 F. C. C. 230, 235.

11. Nor can we see any mitigating circumstances in the fact that in 1943 the principals finally did file the transfer of the 300 shares bought by the Cohens in 1937 and the 100 additional shares bought by George Cohen in 1940. In the first place the disclosures which were finally made set the date of the transfers as November 27, 1943, rather than as of 1937 and 1940 when they actually took place. Moreover, as the applicant admitted on oral argument, the filing took place only after a Select Committee of the House of Representatives had held an inquiry into the affairs of Station WORL, at which both Lafount and Sanford H. Cohen gave testimony. It seems clear to us that the occasion for a genuine *locus penitentiae* is past when the activities in question are already the subject of inquiry.

12. We believe, therefore, that the continued series of misrepresentations and concealments, participated in by all three of the stockholders of the applicant corporation for a period of over six years, clearly demonstrates that the applicant does not possess the necessary character

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qualifications for a licensee of a radio station, and that the public interest, convenience and necessity will therefore not be served by a grant of a renewal of license to this applicant. We also conclude that with this want of the requisite character qualifications is so serious that the rendition of a satisfactory broadcasting service by the applicant cannot serve to detract from this conclusion.

13. In view of the above, it is not necessary here to determine whether the failure of the applicant at any time to file an application with the Commission for transfer of ownership and control to the present stockholders constituted a violation of Section 310(b) of the Act which would independently warrant a denial of the application for renewal of the station license. The evidence is convincing that Lafount and the Cohens, who had been close business associates for years, acted at all times as partners, and that transfer of control actually took place with the joint purchase of the 700 shares of stock on March 25, 1937. But whether the transfer took place then, or at some later date, it is clear that over the six year period all the voting stock was transferred from one group of owners to Lafount and the Cohens, and yet at no time was any application for transfer filed. It may be that the parties were in doubt as to whether they were required to file an application for transfer of control, although it was clear enough
856 that a transfer of control did take place in 1937. But there can be no question that Lafount and the Cohens were aware of their duty to report the true facts as to changes in stock ownership to the Commission as they took place. And their repeated concealment of the true facts of the transfers of the various blocks of stock to the Cohens completely vitiated the possibility of the Commission determining for itself whether or not any transfer of control had taken place. See *Falknor and Schepp (WPAT), supra.*

From a consideration of all the material facts found in the record of this hearing, the Commission has concluded

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that the applicant cannot be entrusted with the responsibilities of a licensee. The Commission, therefore, finds that a grant of the application for renewal of license for the operation of Station WORL by the applicant corporation would not serve the public interest, convenience, or necessity, and the application therefore is denied.

Broadcasting Service Organization, Inc. will be given a temporary license for Station WORL, until August 31, 1947 to wind up its affairs. The Commission will take no action prior to June 1, 1947 on any application for the facilities to be vacated by Station WORL.

In view of our action denying the application for renewal of license, the application for transfer of control of Broadcasting Service Organization, Inc. from its present stockholders to Bitner Broadcasting Company (File No. B1-TC-506) has become moot and is therefore dismissed.

FEDERAL COMMUNICATIONS COMMISSION
T. J. SLOWIE
Secretary

Adopted: April 21, 1947

Released: April 23, 1947

Commissioner Jett dissents from the conclusions reached herein and has filed a separate memorandum setting forth his views.

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857 **Dissenting Opinion of Commissioner Jett on Final Decision**

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.

B-223. Docket No. 6626

File No. B1-R-205

In re Application of

BROADCASTING SERVICE ORGANIZATION, INC. (WORL)
Boston, Massachusetts

For Renewal of License

DISSENTING OPINION OF COMMISSIONER JETT

I do not agree that the Commission must adopt the same drastic measures in this case as it did in the case of *WOKO, Inc.* v. *Federal Communications Commission*, Docket No. 6486, April 4, 1947. While the two cases are similar in some respects, the record against WORL does not disclose any motive for not reporting the extent of the holdings of two stockholders. Moreover, the identity of all the stockholders in WORL was disclosed to the Commission. On the other hand, in the WOKO case, the motive for improper acquisition and hidden ownership of the stock since 1931 was clearly established.

The majority, while "not entirely clear" in regard to the purpose which led the principals of WORL to withhold information concerning the full extent of the various stock transactions, nevertheless believe that the Supreme Court

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ruling in the WOKO case would not excuse willful misrepresentations to the Commission. As I have pointed out, the motive for concealment was clearly established in the WOKO case, while no motive was established in the WORL case. Therefore, I do not feel that the record against WORL supports the finding that any of the parties are guilty of having made willful misrepresentations to the Commission.

In reversing the Court of Appeals and remanding the WOKO case to the Commission, the Supreme Court said:

> "* * * The mild measures to others and the apparently unannounced change of policy are considerations appropriate for the Commission in determining whether its action in this case is too drastic, but we cannot say that the Commission is bound by anything that appears before us to deal with all cases at all times as it has dealt with some that seem comparable."
>
> * * * * * *

858 "We cannot say that the Commission is required as a matter of law to grant a license on a deliberately false application even if the falsity were not of this duration and character, nor can we say that refusal to renew the license is arbitrary and capricious under such circumstances. It may very well be that this Station has established such a standard of public service that the Commission would be justified in considering that its deception was not a matter that affected its qualification to serve the public. But it is the Commission, not the courts, which must be satisfied that the public interest will be served by renewing the license. And the fact that we might not have made the same determination on the same facts does not warrant a substitution of judicial for administrative discretion since Congress has confided the problem to the latter. We agree that this

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is a hard case, but we cannot agree that it should be allowed to make bad law."

Thus, the Court has said that we have the clear legal power under the facts in the WOKO case to deny that station a license for its continued operation. But, as I stated in a separate concurring opinion, it is equally clear that it is our responsibility to determine whether this legal power should be exercised to put the station off the air. I also called attention to the fact that the Commission has been lenient in a large number of cases involving misrepresentations.[1] See *Revocation of Station License of Station WSAL*, 8 F. C. C. 34 (1940); *The Navarro Broadcasting Association (KAND)*, 8 F. C. C. 198 (1940); *Cannon System Limited (KIEV)*, 8 F. C. C. 207 (1940); *Red Lands Broadcasting Association, et al.*, 8 F. C. C. 473 (1941); *East Texas Broadcasting Company (KGKB)*, 8 F. C. C. 479 (1941); *Puerto Rico Advertising Company*, 9 F. C. C. 181 (1942); *Western Gateway Broadcasting Company*, 9 F. C. C. 92 (1941); *Panama City Broadcasting Company (WDLP)*, 9 F. C. C. 208 (1942); *Ocala Broadcasting Company (WTMC)*, 9 F. C. C. 223 (1942); *Drolich Brothers (KDRO)*, Docket No. 6547, 10 F. C. C. 339 (1943); *Georgia School of Technology (WGST)*, 10 F. C. C. 110 (1943); *Hiawathaland Broadcasting Company (WSOO)*, Docket No. 6208, September 12, 1945; *John H. Stenger, Jr.*, Docket No. 6723, April 5, 1946.

In the WOKO case, I concluded, in view of our mild measures to others in the past, to which the Supreme Court refers in its opinion, that an order designed to deal appropriately with the guilty parties and to give the innocent parties an opportunity to continue the service of WOKO would serve adequately to give notice to licensees and applicants that leniency in dealing with false statements and

[1] I wish to make it clear that while there have been far too many cases of failure to file accurate reports the great majority of broadcast licensees and applicants have always furnished the Commission with accurate data.

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concealments of fact can no longer be expected from the Commission and would at the same time preserve from destruction the interests of the innocent parties and
859 of the listeners who now receive WOKO's service.

In WORL, however, I am not convinced that any of the parties are guilty of having made false statements and concealments which were designed to mislead the Commission.

Accordingly, I do not concur in the Commission's drastic decision denying absolutely the application for renewal of WORL's license; nor do I concur in the decision which gives this station until August 31, 1947, to wind up its affairs and go off the air. Instead, I would favor a grant of the application for renewal of license and also the pending application of WORL for voluntary transfer of its facilities to the Bitner Broadcasting Company. If, however, it should be determined that there is a legal barrier to this action due to the recent filing of an application from a third party for WORL's facilities, I then favor a hearing on the mutually exclusive applications with a view to determining on a comparative basis which of the three applications should be granted.

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[Filed—May 13, 1947.]

Petition for Rehearing

860 BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

Docket No. 6626—File No. B1-R-205

In re Application of:

BROADCASTING SERVICE ORGANIZATION, INC. (WORL)
BOSTON, MASSACHUSETTS

For Renewal of License (Main & Auxiliary)

Comes now Broadcasting Service Organization, Inc., by its attorneys, pursuant to the provisions of Section 405 of the Communications Act of 1934, as amended, and Section 1.390 of the Rules, and respectfully requests a rehearing of the Decision of the Commission adopted April 21, 1947, and released April 23, 1947, denying the above-entitled application for renewal of license of Station WORL, Boston, Massachusetts, and dismissing as moot application B1-TC-506 for transfer of control of petitioner corporation from its present stockholders to Bitner Broadcasting Company. In support thereof, the following is shown:

SUMMARY OF ARGUMENT

1. There is no substantial evidence in the record to support the Findings and Conclusions of the Decision that peti-

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tioner has knowingly misrepresented facts, submitted false reports and testimony, and engaged in a planned program of deception and a continued series of concealments, or that Harold A. Lafount, Sanford H. Cohen, and George Cohen acted jointly in acquiring control of WORL and since that time have jointly been in full control of Station WORL and its facilities.

2. There is no substantial evidence in the record of a motive or purpose on the part of Lafount and the Cohens from which a conclusion can be reached of a wilful or deliberate intent to deceive the Commission either as to ownership or control of the licensee.

3. The decision of the Supreme Court in *FCC* v. *WOKO, Inc.* does not establish the authority of the Commission to deny the renewal application of WORL, since the record does not establish wilful or deliberate misrepresentation of facts concerning stock ownership by Broadcasting Service Organization, Inc. Accordingly, the WORL renewal application should be reconsidered and granted upon the basis of Findings of Fact and Conclusions amended to conform to the evidence.

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4. There is no substantial evidence in the record to support the conclusion that petitioner "does not possess the necessary character qualifications for a licensee of a radio station." Since the moral character of the applicant and its principals has heretofore not been in issue, if the requested reconsideration and grant be denied, a rehearing should be had for the purpose of taking evidence as to the moral character of Lafount and the Cohens.

5. The Commission Decision is invalid since less than a majority of the Commission voted in favor of the denial and of the four Commissioners voting on the Decision, only three—or less than a quorum—participated in the oral

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argument on the Proposed Decision. For this reason and because of recent changes in the Commission and its staff, a reargument on the Decision *before the entire Commission* is necessary if reconsideration and grant or rehearing is denied.

6. The fact that the Commission relies heavily on the Supreme Court decision in the WOKO case, which had not been decided at the time of the WORL oral argument, and the fact that the Commission's Conclusions differ substantially from the Proposed Conclusions on which oral argument was had, are further considerations which require a reargument on the Decision if reconsideration and grant or a rehearing is denied.

7. The action of the Commission in dismissing as moot the application B1-TC-506 for transfer of control of petitioner to Bitner Broadcasting Company, with an invitation extended for the filing of new applications for the WORL facilities until June 1st is arbitrary and capricious and in contravention of the requirements of Section 309 (a) of the Act.

862 *The evidence does not support the Findings and Conclusions that petitioner has knowingly or wilfully misrepresented facts or concealed information from the Commission, or that its principals acted jointly in acquiring control of WORL March 25, 1937 and since that time have jointly been in control of the station.*

8. The testimony shows that on March 25, 1937, there were two separate and distinct transactions—(1) the sale of 400 shares of the common voting stock of the licensee to Harold A. Lafount and (2) the contract entered into by Ben Fisher as agent wherein he agreed to purchase 300 shares of the common voting stock (T. 60, 78, 81, 89, 107,

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142, 213). The record further shows that temporary certificates were issued—a certificate for 400 shares was issued in the name of Harold A. Lafount and a certificate of 300 shares to Robert C. Nordblom (T. 120). The transfer of the 400 shares to Harold A. Lafount was reported to the Commission within a few days (T. 15, 39, 236, 538). The certificate for 300 shares issued to Robert C. Nordblom was not transferred but was endorsed in blank and delivered, the intention being to determine how these shares were to be divided between Sanford H. Cohen and George Cohen. Furthermore, it was the intention that upon learning how these shares were to be divided, the transfer would be made and the permanent certificate issued accordingly (T. 122, 126).

9. The testimony shows that prior to the issuance of the permanent certificate, Mr. Crockwell saw Mr. Lafount and informed him of the dissatisfaction of Nordblom with the transaction, which information was imparted to Sanford H. Cohen and George Cohen who thereupon refused to consider the transaction as having been completed and refused to be and act as stockholders until the dissatisfaction was cleared up (T. 22, 117, 127, 144, 174, 219, 290, 321, 363, 368).

10. This evidence indicates clearly that there was no intention to conceal a transfer from the Commission nor intention to deceive the Commission. The only inference to be drawn is that at the time of the discovery of the
863 objections raised by the seller, the purchasers refused to consider that a sale had been made and insisted that before they would consider a sale as having been consummated that they must have a clear title. This is not an unusual procedure with respect to the sale of property. At closings and subsequent to closings, facts often come to light which indicate defects in titles or raise the question as to whether a rescission may occur, and parties under

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such circumstances decline to consider themselves the owners until the title or the defects are removed or the threat of rescission is withdrawn. Any purchaser under such circumstances refuses to accept title or refuses to consider himself the owner for fear that if he should transfer or cause the transfer of the stock upon the books of the corporation to be made that this might be considered a ratification and deprive the purchaser of his right to rescind if the defects are not removed.

11. That is the position of the Cohens and efforts were made to clear the defects. The length of time that it took to clear the matter up does not create any inference of wilfulness. It was natural for the purchasers to desire to have the matter cleared and to hold their rescission in abeyance because the record shows the greater part of the purchase price was used to pay off debts of the corporation licensee and if the purchasers attempted to rescind at that time, the probabilities would have been that they would have suffered a financial loss.

12. It is quite probable that if the Whitwell claim had not arisen, the matter might have been cleared up a long time before 1943 when the final adjustment was made with Mr. Nordblom. On May 29, 1939, Crockwell sent a letter (applicant's Exhibit 6) to Mr. Lafount setting forth that an attorney named Hines of political importance, was claiming the stock for Miss Whitwell and that the said attorney threatened proceedings with respect to the stock. This certainly raised a major defect in the stock. There was great possibility that an action would be started by the said Hines on behalf of Miss Whitwell for the purpose of recovering all of the stock of the company. That
864 this was probable is borne out by a letter subsequently received from said Hines (applicant's Exhibit 8.) This letter was sent by him on July 28, 1941 and in that letter he stated—

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"I hereby demand of you in her behalf all the outstanding shares of the Broadcasting Service Organization, Inc. be turned over to Miss Natalie S. Whitwell.

"Unless reply is received to this letter within ten days from date, appropriate legal proceedings will be instituted in her behalf."

Moreover, Hines wrote the Commission a series of letters beginning in June, 1939, and ending in September, 1941, in which he advised the FCC concerning the Whitwell claims and complained concerning the ownership of WORL (See Volume 39, Hearings Before Select Committee to Investigate FCC, PP 5017-5029, 78th Congress—December 15, 1943). Thus, the Commission has known since the Hines correspondence of the Whitwell claim.

13. The situation must be considered in the light of the time of these various occurrences which showed that the Cohens had not and did not receive clear title to the stock which they had agreed to purchase and to transfer the stock upon the books of the corporation in the light of these defects would have been an assertion of title and a ratification of the sale at a time when there was a major demand asserted of an adverse ownership in the stock. The Hines correspondence indicates very clearly that the testimony submitted on behalf of the applicants was the truth and that there was no concealment nor any intention to conceal.

14. Finding #5 is not properly a part of the Decision because the agreement dated March 16, 1937 was between Crockwell, Nordblom, Eynon and Phelan. Neither Lafount nor the Cohens were party to that agreement and there is no evidence that they were even apprized of it (T. 65, 80, 514). It was an agreement between the parties named therein and expired by its own terms on March 23,

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1937 (Ex. 2, T. 65). The evidence clearly shows that the sale mentioned and contemplated in that agreement was not consummated, that Lafount had left Boston and returned to New York and negotiations for a new deal were entered into (T. 8, 65, 66). Lafount returned to Bos-
865 ton on March 25th and the transaction which was closed was one entirely different than the one contemplated in the aforementioned agreement of March 16, 1937 between Crockwell, Nordblom, Eynon and Phelan. The new contract was one whereby Lafount bought 400 shares and Fisher, as an agent, independently entered into a separate and distinct agreement to buy 300 shares (T. 60, 78, 81, 89).

15. Finding #8 is improperly included in the Decision because it refers to the performance of Eynon and Phelan of their covenants of the agreement of March 16th, concerning which the purchasers had no knowledge and were in no way bound.

16. Finding #9 has no evidence to support it. There is no evidence to show that the ownership and control of the voting stock in the applicant became vested with respect to Sanford H. Cohen and George Cohen. The evidence is that Sanford H. Cohen and George Cohen were not present at the closing; that Mr. Fisher acted as their agent; that while the temporary certificate of stock endorsed in blank by Nordblom was delivered, it was not even known at that time in what proportion the 300 shares were to be divided between the Cohens; and that the stock was not to be transferred upon the books of the corporation until this information was learned which was expected to be within a few days. There was no requirement to report a transfer of this stock until the actual transfer thereof upon the books of the corporation. This was the belief of the Cohens based upon the advice given them by Ben S. Fisher, their radio attorney. Commission records will show that in 1937

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Sanford H. Cohen was not admitted to practice before the Federal Communications Commission and that Mr. George Cohen has never been admitted to practice before the Commission. There is no evidence to show that in 1937 either or both of the Cohens were familiar with the Rules and Regulations of the Federal Communications Commission. They were justified in relying upon the advice of their radio attorney. While they are attorneys at law, familiar with corporation law, they had no special knowledge of the requirements of the Federal Communications Commission (T. 301-2, 361-374).

866 17. As has been stated above, before the issuance of the permanent certificate, they learned of the dissatisfaction of the seller and refused to accept the transfer of the stock and did not consider themselves the owner thereof (T. 321, 363, 368). This is good corporation law. In deciding not to accept title to the stock, they felt that they were complying with the law and it was their belief that since they were not the owners of the stock, there was no transfer and there was no requirement to give notice of a transfer that did not take place.

18. The same set of facts apply to Finding #13. While Nordblom testified that he held the stock for the convenience of the Cohens, he did not testify either that he held the stock *solely* for their convenience or that he had no pecuniary or proprietary interest in the stock. On the contrary, Nordblom testified that he was glad to remain a director and voting stockholder after March, 1937, "because the station was still a tenant of the hotel that I ran and it was good business for me to watch the progress of the station" (T. 535-536). He also testified that he stayed on because he was dissatisfied with the price received for the sale of the stock (T. 537). The record further shows that within a month after March 25, 1937, Crockwell told Lafount that Nordblom had expressed dissatisfaction over

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the sale of his stock to the Cohens and Nordblom agreed to remain the nominal owner of the stock until this dissatisfaction had been cleared up (T. 117, 118). The minutes show that Nordblom appeared at ten stockholders' and directors' meetings between March 25, 1937 and April 6, 1943 and voted the 300 shares of B stock sold to the Cohens, as well as the 100 shares of B stock he still owned (T. 147-150, 519, 526).

19. Finding #14 sets forth that Davison bid in the 200 shares of B stock standing in Crockwell's name for the sum of $100 in the name of Bulova and sets forth the delivery to Sanford H. Cohen of the certificates purchased under a separate assignment and that Sanford Cohen settled with Lafount for the $100 advance and paid Bulova the entire $5,000 debt. The evidence shows that at the time that
867 the stock, which was up as collateral for a debt of $5,000, was sold that Mr. Davison had been instructed to purchase the stock in the name of Sanford H. Cohen, that contrary to instructions he purchased it in the name of Mr. Bulova. At that time Mr. Sanford Cohen was on his vacation in California and did not return until September. When he learned what had been done by Mr. Davison, he raised the question that Mr. Bulova was not the purchaser of the stock and did not even know that the stock had been purchased for him, that in order to correct the situation it would be necessary either to hold a new sale at auction or to assign the stock to Sanford Cohen. It was decided that the better method was to assign the stock and that is the reason there was an assignment from Mr. Bulova to Mr. Sanford Cohen. There was no report of a transfer to Mr. Bulova because he at no time actually owned the stock and the report was made because the real owner of the stock was Mr. Sanford Cohen and the assignment was for the purpose of correcting an error. The evidence shows clearly that this was the situation and no contrary evidence is in the record (T. 255-6, 294, 474, 497).

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20. The finding that Sanford Cohen paid $5,100 creates the inference that the $5,100 had been paid prior to the time the report was made to the Commission of the transfer of the stock to Sanford Cohen for $100. This is not correct. The promise to pay and the actual paying of the $5,000 to Mr. Bulova did not occur until a long time after the transfer of the stock and the notice thereof to the Commission. The testimony shows that it was intended to proceed against Mr. Crockwell to recover the amount of the indebtedness and it was not until it was finally determined that Mr. Crockwell was not good for judgment that Mr. Cohen agreed to reimburse Mr. Bulova for his loss and did make the payment to him (T. 349). The statement in the report that Mr. Crockwell received the $100 is correct because upon such a sale, the amount of the purchase price is credited to the debtor and against that is deducted usually the cost of the sale. This discussion applies to Findings #14, #15 and #16.

868 21. Finding #21 is to the effect that on November 17, 1943, the transaction with respect to the 100 shares of B stock sold by Nordblom for $1,500 was reported to the Commission as a transfer from Nordblom to George Cohen on November 9, 1943 "rather than the true date of September 24, 1940." This finding is not supported by the facts. The arrangement for the sale was made on September 24, 1940 and Mr. Nordblom was paid $1,500. However, before the thirty days required for the report of a transfer to the Commission had to be made Mr. Nordblom expressed his dissatisfaction and again Mr. George Cohen refused to accept the transfer until Mr. Nordblom finally settled not only the 100 shares referred to in this finding but the other 300 shares; and when Mr. Nordblom finally signed a release of all claims by him with respect to the 100 shares and the 300 shares, it was considered that the stock was sold and transferred and was thereupon transferred on the books and notice immediately given to the Commission (T. 25, 178, 363, 537).

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22. The contention of the Commission that Mr. Nordblom was only dissatisfied with the 100 shares and not the 300 and that Mr. Nordblom was only settling the 100 shares and not settling with respect to the 300 is not borne out by the record. The facts are that Crockwell had informed Lafount who in turn informed the Cohens that Nordblom was dissatisfied. Nordblom continued to act not only as a stockholder but as a director and the Cohens in arriving at the $750 settlement arrived at that figure for the settlement not only for the 100 shares but also for the 300 shares. If Nordblom was only settling a claim with respect to the 100 shares, why then did Mr. Nordblom sign a release for all of the shares? This is definite proof that the parties considered that there were claims of Nordblom for all the 400 shares (T. 16, 21, 128, 138, 192, 205, 213, 226, 364).

23. Finding #23 is not sustained by the facts. The evidence shows that the dissatisfaction of Nordblom had been expressed with respect to the 300 shares before the issuance of the permanent certificate. The dissatisfaction was communicated to Mr. Lafount by Mr. Crockwell
869 and the governing factor in this transaction was not what Nordblom may have testified in late 1944 but what the purchasers of the 300 shares were led to believe in April, 1937. The evidence is clear that the Cohens were informed and believed Nordblom to be dissatisfied with the 300 shares and they refused to take title to, or assert any rights in, the shares for that reason (T. 16, 138, 192, 213, 226, 290, 363).

24. There is no evidence to support Finding #25 that the 300 shares of Class B and the 100 shares of Class B "became immediately the property of the Cohens." Nowhere is there any evidence that the Cohens exercised control and ownership of the said stock prior to the time it vested in them and was transferred upon the books of the corporation after Nordblom signed the release and received

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the sum of $750 in full settlement of his claims against the 300 shares of stock as well as the 100 shares of stock and after it became apparent that Miss Whitwell no longer intended to sue in equity for the return of said stock. There is no evidence to sustain the finding that "the applicant falsely represented Nordblom to be the owner." Since the Cohens had refused to accept title to the stock and insisted they would not accept title until the defects were actually cleared up in 1943, the representation that Nordblom was the owner of the said 400 shares of stock was true and not false. He was the record owner upon the books of the company; while he had received the consideration he was not satisfied with the same; the Cohens had refused to accept the transfer of the stock and therefore were not even the beneficial owners thereof. Naturally, since the original refusal to take title to the said shares of stock resulted in there being no vesting of title in the Cohens, then all subsequent reports were true and not false (T. 290, 299, 323, 327, 363).

25. Finding #26 has no evidence to support it. There is no evidence of any oral understanding and agreement that the stock be issued in Nordblom's name, that he appear as stockholder and vote the same, and that he be a director as a courtesy and convenience to the Cohens. This has been discussed with respect to one of the other findings. Nordblom testified that there were other
870 reasons for his voting the stock and being a director (T. 535-537). The primary fact is that title never passed to the Cohens, and they had refused to take title and insisted they were not the owners until the defects in the ownership of the stock were cured. The affidavits of Lafount were true because he believed that the Cohens were not the owners of the stock and did not become the owners until they accepted title thereto and permitted the vesting by allowing the same to be transferred upon the books of the corporation. The evidence definitely shows

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that there were very serious defects to the ownership of this stock and that there was no concealment from the Commission. It was not reported to the Commission in the honest belief that they were not the owners, that there had not been a transfer of the same, and therefore there was no requirement to notify the Commission.

26. The report that was filed with the Commission setting forth $25,062 as being in the bank was explained by Mr. Lafount that the balance sheet was a proposed balance sheet and that in the event it were granted he was going to place $25,000 in the bank account of the corporation licensee, that he actually had the $25,000 in his own bank and that was the intention. He felt that all corporate obligations were shown at less than $700 and that his $25,000 that he would put in was not strictly speaking a liability because if the corporation never earned the money to repay the $25,000 to him, he was a stockholder and any losses of the corporation would be sustained by the stockholders and not by any outside interest so there was no deception of the Commission (T. 399, 454, 543-4).

27. Finding #28 and Footnotes 5 and 6 do not truly set forth the facts as shown by the evidence. The testimony of Lafount was that the temporary certificates were issued in the name of Nordblom and that prior to the time of the issuance of the permanent certificates, the dissatisfaction of Nordblom had been drawn to his (Lafount's) attention and the attention of the Cohens who then refused to accept the stock and thereupon the permanent certificates were issued in Nordblom's name (T. 22, 144, 174, 219). The fact that the Whitwell suit as filed was in law against the corporation has no probative value because the letter
871 of Hines indicates clearly that he was demanding all the certificates of stock be transferred to Miss Whitwell and the fact that subsequently Miss Whitwell started an action at law against the corporation does not take

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away the fact that she could have started an action in equity and that the Cohens refused to become owners of the stock until they had learned that all these defects had disappeared. It was only with the lapse of time that it was learned that Miss Whitwell was not proceeding in equity and had done nothing about trying to get possession of the stock. The proof is that there was no concealment by the Cohens but they had refused to accept title to the stock until it was a clear title (T. 291, 363).

28. Footnote 7 has no evidence in the record to sustain it. The witnesses at no time admitted that they had control of the station (T. 54, 140, 145, 341). In fact, it was denied and it was definitely asserted that the purchase by Lafount of 400 shares and the purchase of 300 shares were independent transactions and in addition title had been refused by the Cohens in respect to the 300 shares (T. 60, 78, 89, 107, 142, 213). On the other hand, 200 shares of stock had been purchased by Sanford H. Cohen upon the foreclosure of Crockwell's 200 shares. This was reported to the Commission. The Commission had knowledge that Mr. Lafount owned 400 shares purchased in 1937 and Sanford Cohen owned 200 shares obtained from Mr. Crockwell in 1938. This amounted to 600 shares of common stock out of 1,000 (T. 24, 256).

29. The fact that the acquisition by Sanford Cohen of 200 shares of Class B stock on September 30, 1938 was reported to the Commission November 27, 1938 is convincing evidence that there was no deliberate concealment of the Cohens' stock ownership. The Commission has known at all times since November 27, 1938 that Lafount and Sanford Cohen together held more than 50% of the voting stock. Moreover, beginning in 1939, Hines (counsel for Miss Whitwell) wrote the Commission a series of letters ending in September, 1941, in which he complained to the FCC concerning the alleged transfer of control to Lafount and the Cohens without Commission consent (Volume 39, Hearings

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Before Select Committee to Investigate FCC, pp. 5017-5029, 78th Congress—December 15, 1943). However, at
872 no time since November, 1938 has the Commission requested or required that an application for transfer of control be filed by Lafount and Sanford Cohen (T. 37, 260, 295, 327).

30. All of the matter above set forth, and particularly that which refers to paragraph 23 of the Findings, applies to Finding #29 of the Commission's Decision. In addition there never was testimony that the Cohens had the right of disposal at all times. They had refused to accept title to the stock. This was known to Nordblom and if Nordblom's dissatisfaction had risen to the point where he decided to rescind, he could have made demands for the said stock, tendered back the purchase price and if his demands were not complied with he could have commenced an action to compel this action. The important fact is not what could have been done by either party but what was actually done and that is that the Cohens refused to take title, refused to be the owners of the said stock until all the defects were cleared up. The claim that "All profits were retained in the broadcasting company to build up that organization for the benefit of the present stockholders" is not a proper inference from the evidence because if an action for rescission by Nordblom or an action by Whitwell in equity for the stock was successfully brought, the said profits would belong to the successful litigant.

31. There is no evidence to support the Conclusions of the Commission. The Conclusions are based upon the Findings which have heretofore been discussed and which definitely show that there had not been any concealment with respect to the 300 shares of stock or the 100 shares of stock, that the Cohens had refused to accept title to the said stock until all defects were cleared up.

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32. Conclusion #6 is that two transfers should have been reported, to wit, the alleged transfer on July 27, 1938 of the 200 shares of Crockwell stock to Arde Bulova and the transfer of this number by Bulova to Sanford H. Cohen on September 30, 1938. As pointed out above, Mr. Bulova was never a purchaser of the said stock. Mr. Davison had been instructed to purchase the same in the name of Mr.
873 Sanford Cohen but instead of following instructions, bought it in the name of Mr. Bulova because Mr. Bulova was the owner of the note and was foreclosing the same. Since Mr. Bulova did not desire to bid in the said stock and did not desire to purchase the same and was not interested in it, Mr. Davison's act was totally unauthorized and in law his purchase in the name of Mr. Bulova was not a purchase at all. The purchase was made on behalf of Mr. Sanford Cohen and the assignment was taken from Mr. Bulova for the purpose of correcting an error and that assignment did not constitute a transfer from Mr. Bulova to Mr. Sanford Cohen but completed what the actual facts called for—a transfer from Mr. Crockwell to Mr. Sanford Cohen and this was duly reported.

33. Conclusion #8 has no evidence whatsoever to support the same. The evidence shows definitely that the applicant did not wilfully and knowingly misrepresent facts concerning its stock ownership in reports to the Commission. The reports of ownership were true in all respects; there was no concealment with respect to the 300 shares and the 100 shares from Nordblom. The Cohens had refused to take title because of the dissatisfaction of Nordblom and subsequently the demand by Whitwell. Upon the refusal of the Cohens to accept title, there was no transfer, they were not the owners of the stock and not being the owners of the stock there was no requirement to report a transfer which did not take place. When the transfer did take place after the defects had been cleared up and the Cohens accepted title, a

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report was promptly made to the Commission. Lafount believed every report filed was true and accurate and in accord with the facts.

34. Conclusion #9 is without foundation. If the Commission assumes that Lafount and the Cohens had mistakenly believed that the transfer of the stock to the Cohens had not been completed, the conclusion is untenable that "there would be no excuse for the repeated and successful efforts to conceal information from the Commission as to the new status of the stock as a result of the transactions of March 25, 1937 and September 24, 1940." Since the Cohens believed that the transfer of shares had not occurred and they did not have title to the stock, there is no basis
874 for their giving information concerning the same to the Commission. They denied ownership of the stock, not only record ownership but also beneficial ownership. They simply held the certificates as security for the money they paid for it. Since they believed that as they were not the owners of the stock they were not required to report any such transfer, there were no facts which required that it be reported to the Commission.

35. Conclusion #12 has no evidence whatsoever to support it. The entire record shows that the failure to report was because of the belief of the applicant that such report need not be filed by reason of the fact that the Cohens refused to take title to the said stock as explained above.

36. There is no evidence in the record to support Conclusion #13. The transfer to Lafount of 400 shares was independent of the sale agreed to by Ben Fisher as agent and there was no evidence that Lafount and the Cohens acted at all times as partners. There is no evidence that transfer of control action took place in 1937 nor is there evidence that there was a joint purchase of 700 shares of stock; there is no evidence of concealment of the true facts or that La-

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fount and the Cohens were required to report a transfer of 300 shares of stock and the 100 shares of stock since they firmly believed that when they refused to take title of the said 400 shares of stock they were, therefore, not the owners thereof and that whatever was reported were the true facts and all the true facts were reported.

> *There is no evidence of a motive or purpose from which a conclusion can be drawn of wilful or deliberate intent to deceive the Commission either as to ownership or control of the corporation.*

37. Paragraph 10 of the Conclusions concedes that the purpose which may have led the principals in this case "to conceal" the various stock transactions "is not entirely clear." The fact is that the record contains no evidence from which a motive or purpose for the alleged concealment can be either drawn or implied. It is fundamental
875 that intent to commit a wrong cannot be established unless a motive or reason for such wrong-doing first be established.

38. It is apparent from the record that neither Lafount nor the Cohens had any reason for withholding from the Commission information on any stock interests in Broadcasting Service Organization, Inc. Arde Bulova, the employer of Lafount and client of the Cohens, was apprized of their respective interests in the licensee from the outset. Unlike the case of Pickard in WOKO, Lafount and the Cohens had no reason for not disclosing their stock interests because such disclosure might jeopardize their positions. The record shows that the principals possess all of the statutory qualifications of broadcast licensees and are reputable citizens. They do not have ownership interests in a number of broadcast stations nor other interests which in any way conflict with the Commission Rules. Thus, they were clearly qualified to be broadcast licensees and there

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could be no intent to conceal their stock ownership because of any personal disqualifications.

39. The only other reason for concealment of stock ownership is that the report of such ownership might involve obtaining Commission consent to a transfer of control and the filing of formal application therefor. This might be considered a valid reason if the Commission in the past had maintained a practice of consistently denying applications involving transfer of control or if the obtaining of consent to transfer of control involved a long or arduous procedure. Commission records will show, however, that in the past it has been a comparatively simple procedure to obtain Commission consent to transfer of control to bona fide persons. The so-called Avco publication procedure for competing bids was not adopted by the Commission until the fall of 1945, long after the transactions involved in this case had occurred. In the matter of Powel Crosley, Jr., transferor, and the Aviation Corporation, transferee, Docket 6767, decided September 6, 1945, the Commission stated that it could not deny a transfer application without revising "seventeen years of precedent and establish new policies." In
the first several years of administration of the Com-
876 munications Act, transfer and assignment applications were handled in a very routine way and granted almost automatically upon a showing that the assignee or transferee possessed the statutory qualifications of a broadcast licensee.

40. It is, therefore, manifest that there was no possible motive or purpose for Lafount or the Cohens misrepresenting to or concealing from the Commission facts concerning their stock ownership. The actions of these men were governed wholly by the considerations set forth in their testimony in the record, summarized in Paragraphs 8 through 36 above, and were in good faith and without in-

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tent to deceive. Why should they deceive the Commission for no purpose? Surely it cannot be contended that the alleged deception was simply for the sake of deception.

THE WOKO DECISION IS INAPPLICABLE TO WORL.

41. The Decision of April 21, 1947 relies heavily on FCC v. WOKO, Inc., 329 U. S. 223, in support of the Commission's authority to deny the WORL renewal application. Paragraph 8 of the Conclusions cites WOKO as holding "that the Commission may refuse to renew the license of an applicant who has wilfully and knowingly misrepresented facts concerning its stock ownership in reports and applications submitted to the Commission." This is an accurate statement of the court decision. But as set forth in detail above, there has been no wilful or knowing misrepresentation of facts concerning stock ownership in the reports and applications which Broadcasting Service Organization, Inc. has submitted to the Commission. Moreover, there are other major differences between the WOKO and WORL cases.

42. In WOKO, a motive for concealment and misrepresentation was clearly established and admitted. The testimony showed that Sam Pickard's stock interest was concealed purposely so that his employer, CBS, would not learn of his manipulations in station ownership. As set forth in Paragraphs 37 to 40 above, no motive has ever been established for the alleged omissions and failure of the principals in WORL to file ownership reports or transfer application.

877 43. In WOKO there was a clearly established systematic course of deception, with the ownership of the Pickard stock withheld from the Commission for a period of about 12 years, and then only disclosed upon Commission investigation. In WORL, on the other hand,

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there was no deception. Within a week after the signing of the March 25, 1937 agreement, the Commission was informed of the purchase by Harold Lafount of 400 shares of voting stock of the corporation—and ever since that time the Commission has known that Lafount is President and directing head of the corporation. On November 27, 1938, the Commission was notified of the acquisition by Sanford Cohen of 200 shares of voting stock—so that ever since the fall of 1938 it has been a matter of record that Lafount and Cohen together held 60% of the voting stock. Ever since the fall of 1943, the Commission has known of the ownership of all the stock of the licensee by Lafount and the Cohens.

44. The testimony in the WOKO case shows that Sam Pickard took an active interest in the affairs of WOKO during the 12 years his stock ownership was concealed. The testimony in the WORL case shows that neither of the Cohens took an active interest or participated in any way in the affairs of WORL until they took title to voting stock and their ownership of such stock was reported to the FCC. Harold Lafount's active interest in WORL was a matter of record with the Commission from the outset.

45. The testimony in WOKO shows that Sam Pickard received substantial yearly dividends during all the years his stock ownership was concealed. The testimony in WORL shows that neither Lafount nor the Cohens have ever received dividends on their stock ownership. All of the profits of the corporation since 1937 have remained in the treasury for expansion of the station and betterment of its program service.

878 *The record is barren of evidence casting doubt on the character of the principals of petitioner; and since their character has heretofore not been in issue, a rehearing is required for the purpose of presenting evidence on this issue.*

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46. The six issues upon which the WORL renewal was heard do not in any manner refer to the moral character or fitness of petitioner or its principals to be the licensee of a radio station. At the hearing, no witnesses or testimony was presented bearing upon "character qualifications" because the matter was not in issue. The Proposed Decision of October 24, 1945, properly made no reference to character considerations. The April 21, 1947, Decision of denial, however, is based entirely on the conclusion that "the applicant does not possess the necessary character qualifications for a licensee of a radio station".

47. This conclusion is reached without one iota of evidence in the record in any way casting discredit or doubt on the good character of the applicant corporation or Lafount and the Cohens, its principals. The record shows, on the contrary, that Lafount is a successful man with a distinguished career in both business and government, and that the Cohens are reputable members of the New York Bar and corporation attorneys of long experience. The record further shows that Lafount has had extensive experience in radio, and that since he first assumed direction of WORL in 1937, the station has made tremendous progress and is rendering an exceptionally meritorious program service. That the Decision completely ignores the evidence on the high standing of WORL in the community and the high caliber of its program service, while choosing to attack the character and fitness of its principals without basis in fact or in the record, is convincing proof that the Findings and Conclusions should be reexamined and reappraised in strict accordance with the record.

48. Petitioner earnestly submits that since, *for the first time in the entire proceeding,* a question has been raised concerning the character and fitness of its principals, justice and equity require that the hearing record be re-
879 opened to afford opportunity for the applicant to submit evidence concerning the character of its prin-

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cipals and their moral fitness to be licensees of a radio station. To deny an application upon an issue without first affording the applicant notice and an opportunity to be heard on that issue is clearly arbitrary and capricious.

A reargument before the entire Commission is necessary because of questionable legality of the vote on the Decision and because of changes in the Commission.

49. Section 4 (h) of the Communications Act provides that four members of the Commission shall constitute a quorum thereof. While a bare quorum voted on the Decision, only three out of seven, or less than one-half of the Commission voted in favor of the denial of license. It has been held that in a federal administrative agency, a majority of a quorum can make determinations of fact; but the decision applied to a Commission where a majority of a quorum necessarily is one-half of the total membership of the Commission (Frischer & Company, Inc. v. Bakelite Corporation, 39 Fed. (2d) 247). There apparently is no decision establishing the legality of action by a quorum of a federal administrative agency where, as in this case, the majority vote of the quorum is less than one-half of the total membership of the agency. It would seem that the legality of administrative action of such drastic nature as the denial of renewal of license of an established radio station on grounds of character qualifications, is questionable when concurred in by less than a majority of the licensing agency.

50. Moreover, it should be noted that of the four Commissioners constituting the quorum voting on the renewal, only three, or less than a quorum, participated in the oral argument on the Proposed Decision. Of the three who voted to deny the renewal, only two, or less than a majority of the quorum, participated in the oral argument. Thus, even

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if action by a majority of a quorum less than a majority of the Commission were legally sufficient, the action in this case appears invalid. Of what value to the applicant is an *oral* argument if its case be finally decided by one or more Commissioners who have not participated in the
880 argument? Oral argument is th eonly opportunity for the applicant to urge the merits of its case upon the members of the Commission. A review of the transcript of the oral argument cannot be an acceptable substitute for presence at the argument. It would surely be reversible error for one or more judges participating in a court decision not to have been present at the closing argument of counsel, even though the judge may have conscientiously studied the official transcript of such argument. In this case, since the applicant did not have het benefit of a member of the Commission as the Presiding Officer at the hearing, as has been the practice in many of the recent hearings involving revocation or removal of licenses, it is all the more necessary that it be afforded the opportunity of having all the Commissioners voting on its renewal of license participate in the oral argument.

51. It should also be noted that two of the six Commissioners participating in the oral argument January 24, 1946, are no longer on the Commission, and two new Commissioners have succeeded them. Since the inception of the WORL renewal proceedings, two General Counsels have become members of the Commission. None of the staff which participated in the renewal hearing are any longer employed by the Commission. The Examiner, P. W. Seward, left the Commission prior to the issuance of the Proposed Decision, and Leonard H. Marks, Peter Shuebruk, and J. Alfred Guest, Commission Counsel, have all resigned their positions. As a result, during the preparation and adoption of its Decision of April 21, 1947 the Commission has apparently not had the counsel of any of its staff members who participated in the hearing.

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52. The foregoing considerations alone clearly warrant Broadcasting Service Organization, Inc. being given an opportunity for a reargument on the denial of its renewal application *before the entire Commission* as now constituted. Together with the considerations set forth in the succeeding paragraphs, reargument appears not only desirable, but necessary, from the standpoint of both the Commission and petitioner.

881 *The emphasis on the* WOKO *decision, and the substantial change in the Conclusions, are further considerations warranting the grant of reargument on the Decision.*

53. On January 24, 1946, when oral argument was had, the Court of Appeals for the District of Columbia had just announced its decision reversing the Commission action denying the WOKO renewal application. The case had not reached the Supreme Court by certiorari. As a result, the court precedent upon which the Commission now relies so heavily had not been established and the WORL case was not argued with the WOKO precedent in mind. It is submitted that since the April 21, 1947 Decision denying the WORL renewal is based almost entirely on the language of the Supreme Court in WOKO, petitioner should now be given full opportunity to present oral argument on the non-applicability of the WOKO case to the facts of the instant case.

54. The footnote on page 2 of the Decision states that while the Findings of Fact of the Proposed Decision have been recast in chronological order for purposes of clarity, substantially the same Findings of Fact are made. While this may be true, there can be no question but that the Conclusions of the Decision differ materially from the Conclusions of the Proposed Decision. The difference is due in part to the WOKO decision, and in part to a change in the

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Commission precedents cited and a substantial shift in the ground on which the Decision is based. The Proposed Decision is based primarily on alleged violation of the requirements of Section 310 (b) of the Act, and secondarily on alleged false statements submitted to the Commission. The Final Decision, however, is based entirely on the applicant's lack of the necessary "character" qualifications to be a licensee because of alleged concealment and misrepresentation of facts submitted to the Commission in reports, with the question of alleged violations of Section 310 (b) of the Act not directly determined, but indirectly suggested.

882 55. It is the position of petitioner that it is entitled, on oral argument, to be fully apprized of the grounds upon which the proposed denial of its license rests. If, after oral argument, because of new court decisions or other considerations, the grounds for denial are shifted, further oral argument is required under due process of law.

The summary dismissal as moot of B1-TC-506, with notice that new applications for the WORL facilities will be received until June 1, is violative of the requirements of Section 309 (a) of the Act and arbitrary and capricious.

56. Section 309 (a) of the Communications Act provides that if upon examination of any application for station license the Commission does not determine that public interest will be served by the granting thereof, "it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe." The Act contains no provision or no authority, express or implied, which permits the Commission to dismiss as moot a bona fide application

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for a station license or transfer thereof. B1-TC-506 is a bona fide application for transfer of control of Broadcasting Service Organization, Inc., licencee of WORL. The dismissal as moot of the transfer application therefore directly contravenes the explicit requirements of Section 309 (a) of the Act. Under that section, the only alternatives before the Commission are to grant the application or designate it for hearing. Neither alternative has been met.

57. It should be observed that all of the requirements of the so-called Avco procedure, as set forth in Section 1.321 of the Rules, have been complied with by petitioner in B1-TC-506. The necessary publication for competing bids was done by petitioner in a Boston newspaper, and the Commission itself advertised for competing bids in the Federal Register. Thus, if any other persons or groups desired to acquire the facilities of WORL on the same terms and conditions as Bitner Broadcasting Company, they had
883 60 days in which to file application and receive comparative consideration with Bitner Broadcasting Company. No applications having been received, the Commission under its own rule should consider and act on B1-TC-506. It is unnecessary to serve notice in the April 21, 1947 Decision that "the Commission will take no action prior to June 1, 1947, on any application for the facilities to be vacated by WORL" since the public has already had repeated notice of a 60 day period for the filing of applications in competition with Bitner.

58. Since the dismissal as moot of the transfer application is an integral part of the April 21, 1947 Decision, and since the transfer application was not filed until after the oral argument on the Proposed Decision, a reargument should be had on the validity of that part of the Decision summarily dismissing B1-TC-506.

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WHEREFORE, the premises considered, petitioner respectfully requests, in accordance with the provisions of Section 1.390 (e) of the Rules, that the Commission:

1. Amend the Findings of Fact and Conclusions of its April 21, 1947, Decision to conform to the evidence by eliminating all suggestion of deliberate or wilful misrepresentation, deception, or concealment on the part of petitioner or its principals in the submission of reports, information, or testimony to the Commission; and

2. Amend the Findings of Fact and Conclusions of the Decision to conform to the evidence by eliminating all suggestion that Lafount and the Cohens acted jointly on March 25, 1937, in acquiring control of WORL and since that time have jointly controlled WORL and its facilities; and

3. Amend the Findings of Fact and Conclusions of the Decision by eliminating any suggestion or inference that Lafount and the Cohens have knowingly and wilfully contravened the provisions of Section 310 (b) of the Act by failing to request Commission consent to the transfer of control of the Broadcasting Service Organization, Inc.; and

884 4. Adopt a decision and order reconsidering and granting the WORL renewal application upon the amended Findings of Fact and Conclusions, and reinstating and granting B1-TC-506 for transfer of control to Bitner Broadcasting Company; or, if the foregoing relief be denied,

5. Reopen the hearing record on the WORL renewal application and order a further hearing for the purpose of receiving testimony on the moral character and fitness of the applicant and its principals to be the licensee of a radio station; or, if this relief be denied,

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6. Grant a further oral argument before the entire Commission on its Decision of April 21, 1947, and the changes therein from the Proposed Decision; the applicability of the Supreme Court decision in the WOKO case to the facts of the instant case; and the legality of the summary dismissal as moot of application B1-TC-506 for transfer of control of WORL.

Respectfully submitted,

BROADCASTING SERVICE ORGANIZATION, INC.
Fisher, Wayland, Duvall and Southmayd,
Its Attorneys.

By JOHN P. SOUTHMAYD

Address:

902 Earle Bldg.
Washington 4, D. C.

Dated: May 13, 1947.

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Order Designating Oral Argument on Petition for Rehearing

887 Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

DOCKET No. 6626

FILE No. B1-R-205

In re Application of

BROADCASTING SERVICE ORGANIZATION, INC. (WORL)
Boston, Massachusetts

For Renewal of License

ORDER

WHEREAS, on April 21, 1947, the Federal Communications Commission adopted an opinion and order denying the above-entitled application for renewal of license of radio station WORL, Boston, Massachusetts, and dismissing as moot application B1-TC-506 for transfer of control of petitioner corporation from its present stockholders to the Bittner Broadcasting Company, and

WHEREAS, on May 13, 1947, Broadcasting Service Organization, Inc., filed a petition for rehearing requesting the Commission to amend its decision in certain named respects and as amended grant the two pending applications of petitioner for renewal of license and transfer of control; or to reopen the hearing record to receive further testimony on the character qualifications of the applicant and its principal stockholders to be the licensee of a radio

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station; or to grant further oral argument before the entire Commission on its decision of April 21, 1947,

NOW, THEREFORE, IT IS ORDERED That the petition for rehearing of Broadcasting Service Organization, Inc., BE, AND HEREBY IS, set for oral argument before the Commission at 10:30 A. M., on September 25, 1947, at its offices in Washington, D. C., and that the oral argument be directed to the findings of fact and conclusions of law set out in the Commission's decision of April 21, 1947.

BY THE COMMISSION

T. J. SLOWIE
Secretary

Adopted July 28, 1947.

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Memorandum Opinion and Order on Rehearing

969 Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

DOCKET NO. 6626

FILE NO. B1-R-205

In re Application of

BROADCASTING SERVICE ORGANIZATION, INC. (WORL)
Boston, Massachusetts

For Renewal of License

MEMORANDUM OPINION AND ORDER

(Adopted October 15, 1947)

BY THE COMMISSION: Commissioner Jett dissenting; Commissioner Hyde not participating.

On April 21, 1947, the Commission adopted a decision and order denying the above-entitled application of Broadcast Service Organization, Inc., Boston, Mass., for renewal of license of radio station WORL, and dismissing as moot application B1-T. C. 506 for transfer of control of petitioner corporation from its present stockholders to the Bittner Broadcasting Company. On May 13, 1947, Broadcast Service Organization, Inc., filed a petition for reconsideration and rehearing of the Commission's decision and order of April 21, 1947. On July 28, 1947, the Commission issued an order setting the petition for rehearing for oral

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argument before the Commission and ordering that such argument be directed to the findings of fact and conclusions of law set out in the Commission's decision of April 21, 1947. Oral argument pursuant to this order was held before the Commission *en banc* on October 8, 1947.

The Commission has given serious consideration to oral argument made in behalf of station WORL as well as to the brief submitted in its behalf. However, after careful consideration of our decision and order of April 21, 1947, and the record on which they are based, we have concluded that no sufficient reason has been advanced for departure therefrom, and we, therefore, hereby reaffirm and adopt said decision and order as the Commission's final decision in the matter, with the exception of the second full paragraph of page 18, thereof, concerning the temporary extension of license for station WORL, which is no longer applicable. Since the station is presently operating on a temporary extension of its license granted on August 21, 1947, and extending until November 30, 1947, action by the Commission with reference to extension of the license is not necessary at this time.

FEDERAL COMMUNICATIONS COMMISSION

T. J. SLOWIE
Secretary

Released: October 15, 1947

(Seal)

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Dissenting Opinion of Commissioner Jett on Rehearing

970 Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.
B-223

DOCKET No. 6626

FILE No. B1-R-205

In re Application of

BROADCASTING SERVICE ORGANIZATION, INC. (WORL)
Boston, Massachusetts

For Renewal of License

DISSENTING OPINION OF COMMISSIONER JETT

I do not agree that the Commission must adopt the same drastic measures in this case as it did in the case of *WOKO, Inc.* v. *Federal Communications Commission,* Docket No. 6486, April 4, 1947. While the two cases are similar in some respects, the record against WORL does not disclose any motive for not reporting the extent of the holdings of two stockholders. Moreover, the identity of all the stockholders in WORL was disclosed to the Commission. On the other hand, in the WOKO case, the motive for improper acquisition and hidden ownership of the stock since 1931 was clearly established.

The majority, while "not entirely clear" in regard to the purpose which led the principals of WORL to withhold

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information concerning the full extent of the various stock transactions, nevertheless believe that the Supreme Court ruling in the WOKO case would not excuse willful misrepresentations to the Commission. As I have pointed out, the motive for concealment was clearly established in the WOKO case, while no motive was established in the WORL case. Therefore, I do not feel that the record against WORL supports the finding that any of the parties are guilty of having made willful misrepresentations to the Commission.

In reversing the Court of Appeals and remanding the WOKO case to the Commission, the Supreme Court said:

> ". . . The mild measures to others and the apparently unannounced change of policy are considerations appropriate for the Commission in determining whether its action in this case is too drastic, but we cannot say that the Commission is bound by anything that appears before us to deal with all cases at all times as it has dealt with some that seem comparable."
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> 971 "We cannot say that the Commission is required as a matter of law to grant a license on a deliberately false application even if the falsity were not of this duration and character, nor can we say that refusal to renew the license is arbitrary and capricious under such circumstances. It may very well be that this Station has established such a standard of public service that the Commission would be justified in considering that its deception was not a matter that affected its qualifications to serve the public. But it is the Commission, not the courts, which must be satisfied that the public interest will be served by renewing the license. And the fact that we might not have made the same determination on the same facts does not warrant a substitution of judicial for ad-

ministrative discretion since Congress has confided the problem to the latter. We agree that this is a hard case, but we cannot agree that it should be allowed to make bad law."

Thus, the Court has said that we have the clear legal power under the facts in the WOKO case to deny that station a license for its continued operation. But, as I stated in a separate concurring opinion, it is equally clear that it is our responsibility to determine whether this legal power should be exercised to put the station off the air. I also called attention to the fact that the Commission has been lenient in a large number of cases involving misrepresentations.[1] See *Revocation of Station License of Station WSAL*, 8 F. C. C. 34 (1940); *The Navarro Broadcasting Association (KAND)*, 8 F. C. C. 198 (1940); *Cannon System Limited (KIEV)*, 8 F. C. C. 207 (1940); *Red Lands Broadcasting Association, et al.*, 8 F. C. C. 473 (1941); *East Texas Broadcasting Company (KGKB)*, 8 F. C. C. 479 (1941); *Puerto Rico Advertising Company*, 9 F. C. C. 181 (1942); *Western Gateway Broadcasting Company*, 9 F. C. C. 92 (1941); *Panama City Broadcasting Company (WDLP)*, 9 F. C. C. 208 (1942); *Ocala Broadcasting Company (WTMC)*, 9 F. C. C. 223 (1942); *Drolich Brothers (KDRO)*, Docket No. 6547, 10 F. C. C. 339 (1943); *Georgia School of Technology (WGST)*, 10 F. C. C. 110 (1943); *Hiawathaland Broadcasting Company (WSOO)*, Docket No. 6208, September 12, 1945; *John H. Stenger, Jr.*, Docket No. 6723, April 5, 1946.

In the *WOKO* case, I concluded, in view of our mild measures to others in the past, to which the Supreme Court refers in its opinion, that an order designed to deal appropriately with the guilty parties and to give the innocent parties an opportunity to continue the service of

[1] I wish to make it clear that while there have been far too many cases of failure to file accurate reports the great majority of broadcast licensees and applicants have always furnished the Commission with accurate data.

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WOKO would serve adequately to give notice to licensees and applicants that leniency in dealing with false statements and concealments of fact can no longer be expected from the Commission and would at the same time preserve from destruction the interests of the innocent parties
972 and of the listeners who now receive WOKO's service. In WORL, however, I am not convinced that any of the parties are guilty of having made false statements and concealments which were designed to mislead the Commission.

Accordingly, I do not concur in the Commission's drastic decision denying absolutely the application for renewal of WORL's license. Instead, I would favor a grant of the application for renewal of license and also the pending application of WORL for voluntary transfer of its facilities to the Bitner Broadcasting Company.

PY

Stipulation re Transfer Application

[Filed—January 2, 1948.]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 9690

BROADCASTING SERVICE ORGANIZATION, INC.,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee.

Comes now Broadcasting Service Organization, Inc., and the Federal Communications Commission, by and through their respective attorneys, and pursuant to the provisions of Rule 37(b) of the General Rules of this Court, hereby stipulate and agree as follows:

* * * * *

(b) That the records of the Federal Communications Commission disclose that, on August 26, 1946, an application was filed at the Federal Communications Commission in the proper form and duly subscribed and sworn to, to transfer all the stock in Broadcasting Service Organization, Inc., licensee of station WORL, Boston, Mass., from Harold A. Lafount, Sanford H. Cohen and George Cohen to Laurence S. Bittner and Dominic J. Perri, sole stockholders of the Bittner Broadcasting Company, Boston, Mass., for a total consideration of Two Hundred Thousand ($200,000) Dollars; that, pursuant to Section 1.321 of the Rules and Regulations of the Federal Communications

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Commission publication of the proposed transfer was made by the proposed transferors twice a week for three weeks in the Boston Daily Globe, from August 28 to September 14, 1946; that simultaneously publication of the proposed transfer was made in the Federal Register as required by Section 1.321 of the Rules and Regulations of the Federal Communications Commission; that at no time during such period or at any time thereafter was any application filed with the Federal Communications Commission by any person or group of persons desiring to acquire the outstanding stock of Broadcasting Service Organization, Inc., on the same terms and conditions as set forth in the agreement filed with the Federal Communications Commission at the time the transfer application herein referred to was filed; and that this application for transfer of control of Broadcasting Service Organization, Inc., from its present stockholders to the Bittner Broadcasting Company is the same application which is referred to on page 18 of the Decision of the Federal Communications Commission, *in re Application of Broadcasting Service Organization, Inc.* (*WORL*), for Renewal of License, at page 856 of the record filed with this Court in the above-entitled proceeding;

* * * * *

Respectfully submitted,

JOHN P. SOUTHMAYD
Counsel for Broadcasting Service, Inc., Appellant

BENEDICT P. COTTONE
General Counsel, Federal Communications Commission, Appellee

Dated: January 2, 1948.

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(9461)

BLEED THROUGH - POOR

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 9690

BROADCASTING SERVICE ORGANIZATION, INC., APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

APPEAL FROM THE FEDERAL COMMUNICATIONS COMMISSION

Argued May 10, 1948. Decided November 24, 1948

Mr. Walter M. Bastian, with whom *Messrs. Ben S. Fisher and John P. Southmayd* were on the brief, for appellant. *Mr. Charles Vernon Wayland* also entered an appearance for appellant.

Mr. Richard A. Solomon, attorney, Federal Communications Commission, with whom *Messrs. Benedict P. Cottone*, General Counsel, Federal Communications Commission, *Harry M. Plotkin*, Assistant General Counsel, Federal Communications Commission, *Max Goldman*, Assistant Chief, Litigation and Administration Division, Federal Communications Commission, and *Dee W. Pincock*, Attorney, Federal Communications Commission, were on the brief, for appellee.

Before EDGERTON, CLARK and WILBUR K. MILLER, JJ.

CLARK, J.: Appellant, a Massachusetts corporation, has been the licensee of Station WORL, which operates in Boston, Massachusetts, on 950 kc, with 1 KW, daytime only, since 1931. On May 27, 1944, appellant filed with appellee Commission an application for renewal of its station license, pursuant to Section 308(a) of the Communications Act of 1934, as amended.[1] Hearings were held in October and December of 1944 on this application "before a presiding officer duly appointed by the Commission to determine whether public interest, convenience and necessity will be served by

[1] 48 Stat. 1084 (1934), 47 U. S. C. § 308(a) (1946).

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a grant of the application."[2] Approximately one year after these hearings, the Commission issued its proposed decision which embodied lengthy findings of fact and conclusions of law, the net result of which was to conclude that "the applicant [appellant] cannot be entrusted with the responsibilities of a licensee" and, hence, that the renewal application should be denied. Appellant duly filed exceptions to this proposed decision and a further hearing was had in January of 1946.

On August 26, 1946, appellant and the Bitner Broadcasting Company (hereinafter called "Bitner") filed a joint application requesting the Commission's consent for transfer of control of the appellant from its present stockholders to the sole two stockholders of Bitner for a consideration of $200,000.

On April 23, 1947, the Commission released its final decision (adopted April 21, 1947) denying appellant's application for renewal of license of Station WORL and dismissing as moot the pending application for transfer of control of appellant from its present stockholders to those of Bitner. This decision was by a vote of 3 to 1 (Commissioner Jett dissenting with opinion) with the remaining 3 of the 7 members of the Commission not participating.

Appellant thereafter duly filed a petition for rehearing and reconsideration claiming, among other things, that the Commission's

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[2] The specific issues as designated in the notice of hearing were as follows:

"1. To determine who are the present owners of the stock of the applicant corporation, and when and from whom said stock was acquired.

"2. To determine whether the license granted to the applicant corporation, or the rights or responsibilities incident thereto, have been in any manner, either directly or indirectly, transferred, assigned, or disposed of without the consent of the Commission, as provided by the Communications Act of 1934, as amended, and particularly Section 310(b) thereof.

"3. To determine whether the statements and representations made in the various applications, documents, and reports filed with the Commission on behalf of the applicant, by its officers, directors, and/or agents, have fully and accurately reflected the facts concerning the ownership and distribution of the stock of the company.

"4. To determine whether the applicant's officers, directors, stockholders, and/or agents, or either of them, have made false statements and representations to the Commission as to the ownership, transfer, and/or control of the stock of the applicant.

"5. To determine whether all contracts and agreements which have been entered into by applicant's officers, directors, stockholders, and/or agents, relative to the sale and transfer of the stock of the applicant corporation, have been reported to the Commission as required by Section 43.1 of the Rules and Regulations.

"6. To determine whether in view of the facts adduced under the foregoing issues, public interest, convenience, or necessity would be served by granting the instant application."

BLEED THROUGH – POOR

final decision was invalid since less than a majority of the members of the Commission voted in favor of the denial of the application and that, of the four who did vote, only three—less than a quorum—participated in the oral argument on the proposed decision. For this reason and because of recent changes in the Commission and its staff, appellants sought a reargument on the final decision before the entire Commission. On July 28, 1947, appellee Commission issued an order designating the petition for rehearing for oral argument and ordering that such argument be directed to the findings of fact and conclusions of law set out in the final decision of April 21, 1947. Such argument was had, apparently before all seven Commissioners, and a later Commission order of October 15, 1947, was issued reaffirming its final decision of April 21, 1947. Once again, Commissioner Jett dissented in substantially the same terms as he used in his prior dissent. Commissioner Hyde did not participate in either the final decision or the later reaffirming order, although he appears to have been present during the argument on the petition for rehearing. The Commission's order of October 15, 1947, made no decision on appellant's request in its petition for rehearing for an opportunity at a further hearing to present testimony on the character and integrity of its principals and no decision was made on appellant's contention that dismissal as moot without hearing of the application for transfer of control to Bitner contravenes Section 309(a) of the Act,[3] except to state in general terms that "no sufficient reason has been advanced for departure" from the Commission's previous rulings. Appellant has perfected this appeal from the above-described final decisions and orders of the Commission. Appellant continues to operate Station WORL by virtue of various extentions of temporary licenses granted by the Commission in order to preserve the *status quo* during the pendency of this appeal.

A summarized statement of the pertinent facts and transactions which gave rise to this controversy may well be enlightening at this point.

In 1937, appellant corporation was in rather serious financial difficulty, having lost money for several years. Accordingly, its four stockholders (then Crockwell, Phelan, Eynon and Nordblom, by name) decided that a sale of the stock of the corporation was necessary to provide new funds for the corporation. There followed a series of stock transactions, somewhat involved, as a result of which the above-named four stockholders became completely divested of all interest in and control over the stock of appellant. The new stockholders and present officers and stockholders of the corporation are Harold A. Lafount, Sanford H. Cohen, George Cohen and

[3] 48 Stat. 1085 (1934), 47 U. S. C. § 309(a) (1946).

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Robert E. Davison. As indicated above, this divestiture did not result from a single transaction, but was the ultimate result of at least six separate agreements and/or contracts of sale. Just when this divestiture became final for all legal purposes is problematical, but it is certain that it had been accomplished by November of 1943, prior to the filing by appellant of its application for renewal of license. Lafount was a key figure in all of these transactions. A former member of the Federal Radio Commission (predecessor to appellee Commission) and now Director-President and principal stockholder of appellant corporation, Lafount either made or engineered the subsequent purchases which finally resulted in the acquisition of all of the stock of appellant corporation by Lafount, the Cohen brothers, and Davison.[4] The substance of the appellee's case against appellant is that appellant, through its authorized agents, either failed to make at all, or unduly delayed in making, certain necessary reports to the appellee[5] and that some of the reports that were filed contained false and misleading information so as to reflect an inaccurate, if not untrue, picture of stock ownership in the corporation. Appellant explains these asserted derelictions on the basis of oversight, in the cases of failure to report and sale reporting, and, in the cases of delay in reporting, bona fide belief that because of the nature of the particular transactions a report was unnecessary at the time. The Commission, in its final decision of April 21, 1947, concluded that "the continued series of misrepresentations and concealments . . . clearly demonstrates that the applicant [appellant] does not possess the necessary character qualifications for a licensee of a radio station, and that the public interest, convenience and necessity will therefore not be served by a grant of a renewal of license to this applicant. We also conclude," the decision continues, "that this want of the requisite character qualifications is so serious that the rendition of a satisfactory broadcasting service by the applicant cannot serve to detract from this conclusion."

It is undisputed that the present officers and stockholders of appellant are all citizens of the United States who possess the technical qualifications required of officers and stockholders of a licensee corporation. Further, it is a matter of record that, under the direction and guidance of Lafount as President of appellant corporation

[4] The two Cohens and Davison are concededly all reputable attorneys of considerable experience.

[5] The Rules and Regulations of the Commission required a licensee such as appellant, within 30 days of any change in holders or beneficial owners of its corporate stock, to report such change in detail and in conformity with instructions set forth in forms adopted by the Commission for that purpose. Such reports as were made by appellant were apparently all made on the forms prescribed by the Commission.

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and with the aid of other personnel under him, Station WORL grew and prospered both in its financial status and in the public esteem. Appellant points out, and appellee does not deny, that in 1938 the station showed a loss of $11,424. on total receipts of $54,754. and that in 1943 there was a profit of $25,101. with receipts amounting to $240,468. The so-called "Hooper rating"[6] of WORL rose progressively from 1941 to 1943, putting WORL in a tie for first place among Boston daytime listeners. The station also received the McNinch Award for its outstanding weekly public service programs.

The Communications Act of 1934, as amended, provides for the taking of an appeal to this court in cases such as this and empowers this court to affirm or reverse a decision of the Commission, subject, however, to certain express limitations. Section 402(e) of the Act provides in pertinent part as follows:

> ". . . *Provided, however,* That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious . . ."[7]

The above-quoted provision has been interpreted and passed upon many times by this court and other federal courts. For example, in *Yankee Network, Inc.* v. *Federal Communications Commission*,[8] we said that it was immaterial that the evidence before the Commission was susceptible of other conclusions than those drawn from it by the Commission and that, assuming the presence of substantial evidence, we would not substitute our judgment for that of the Commission. Also in *Missouri Broadcasting Corporation* v. *Federal Communications Commission*,[9] we pointed out that Section 402(e) of the Act implies that there shall be a hearing and the taking and preserving of the evidence and that this court is empowered "to deny effect to an order made without any supporting evidence or contrary to the indisputable character of the evidence, or wherever the hearing or the decision is inadequate, unfair, or arbitrary."[10] The Supreme Court denied certiorari in the *Missouri Broadcasting* case.[11] However, regardless of whatever interpretation the courts

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[6] This rating is closely watched by most advertising men and generally considered by radio men to be a valuable criterion of popularity and public interest in a radio station or program.

[7] 48 Stat. 1094 (1934), 47 U. S. C. § 402(e) (1946).

[8] 71 App. D. C. 11, 107 F. 2d 212 (1939).

[9] 68 App. D. C. 154, 94 F. 2d 623 (1937).

[10] 68 App. D. C. at page 156.

[11] 303 U.S. 655, 58 Sup. Ct. 759, 82 L. Ed. 1115 (1938).

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have placed upon the words of Congress, we believe that the most accurate guides for determining legislative intent and purpose are the words themselves which were enacted into law, provided those words are unambiguous and unequivocal, as are the words of Section 402(e) of the Act. Those words say, literally, that this court's review "shall be limited to questions of law." They also say, literally, that the Commission's findings of fact (not its conclusions of law) shall be conclusive (1) "if supported by substantial evidence" and (2) "unless it shall clearly appear that the findings . . . are arbitrary or capricious." We thus take it to be not only the privilege but the duty of this court, in compliance with the plain meaning of the above-discussed statutory language, to do the following three things: (1) to determine all questions of law raised by this appeal; (2) to ascertain from the record before us whether the Commission's findings of fact in this case are supported by substantial evidence; and (3) to decide whether or not it clearly appears that the Commission's findings of fact are arbitrary or capricious." Further, we take it as obvious that, should we decide *either* that the findings of fact are not supported by substantial evidence or that such findings are clearly shown to be arbitrary or capricious, we then should no longer accord those findings the conclusiveness otherwise bestowed upon them by the Act. Finally, in conjunction with the above discussion of Section 402(e) of the Act, we wish to emphasize one further restriction placed upon this court by that section. It empowers this court "to enter a judgment *affirming or reversing* the decision of the Commission." (Italics supplied). There is no middle ground. And, in the event that reversal is decided upon by this court, that section commands that we "shall remand the case to the Commission to carry out the judgment of the court." Therefore, should we find any error by the Commission in any of the respects categorized above, there can be no question of our modifying the Commission's decision or of affirming in part and reversing in part; we have no recourse but to reverse and remand to the Commission.[12]

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[12] Chief Justice Hughes, speaking for the Supreme Court in 1933, stated that it is not within the authority of this court "to revise the action of the Commission (then the Federal Radio Commission) from an administrative standpoint and to make an administrative judgment. . . . The provision that, in the case the Court reverses the decision of the Commission, 'it shall remand the case to the Commission to carry out the judgment of the Court' means no more than that the Commission in its further action is to respect and follow the Court's determination of the questions of law. . . ." *Federal Radio Commission* v. *Nelson Bros. Co.*, 289 U.S. 266, 276, 277, 278, 53 Sup. Ct. 627, 77 L. Ed. 1166 (1933), quoted with approval in *Heitmeyer* v. *Federal Communications Commission*, 68 App. D. C. 180, 95 F. 2d 91 (1937). See also, 124 A.L.R. 985 (1940).

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It is beyond dispute that the ultimate and prevailing purpose of the Act is to foster and protect the public interest, convenience, and necessity in all of the means of rapid communication now in vogue in this country, including radio broadcasting. The frequent express references in the statute to this interest, convenience, and necessity of the public and the licensing procedure set forth therein make this abundantly manifest, as to the many published opinions of this and other federal courts.[13]

We recognize too that it is the Commission and not the courts which is charged by the Act with determining whether or not the renewal of an existing broadcasting license would serve the public interest, convenience, or necessity. However, when such a determination has been made by the Commission and the case afterward comes here through due process, it then becomes the function of this court, as discussed above, to decide whether that determination was reached in accordance with established law and whether it was based on substantial evidence and not arbitrary and capricious. In that sense, a decision by this court is not a substitution of our opinion for that of the Commission.

In the instant case, the "Conclusion" of the Commission in its final decision adopted on April 21, 1947, contained the following statement: ". . . And it has been held that the Commission may refuse to renew the license of an applicant who has willfully and knowingly misrepresented facts concerning its stock ownership in reports and applications submitted to the Commission. *Federal Communications Commission* v. *WOKO, Inc.*, 329 U. S. 223, 67 S. Ct. 213 (1946).

"In that case Mr. Justice Jackson, speaking for a unanimous court stressed that it was 'beside the point' whether or not the misrepresentation was material or whether the Commission would have acted differently if the true facts had been known to it. He went on to say:

" 'The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones. We do not think it is an answer to say that the deception was unnecessary and served no purpose.'

"In this case, however, whatever the purpose in concealing the information from the Commission may have been, it is clear that

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[13] In *National Broadcasting Co., Inc. et al.* v. *United States et al.*, 319 U.S. 190, 215, 216, 63 Sup. Ct. 997, 87 L. Ed. 1344 (1943), Justice Frankfurter, after pointing out that the "criterion governing the exercise of the Commission's licensing power is the 'public interest, convenience, or necessity' ", stated that the Commission "was, however, not left at large in performing this duty. The touchstone provided by Congress was the 'public interest, convenience, or necessity,' a criterion which 'is as concrete as the complicated factors for judgment in such a field of delegated authority permit.' "

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the misrepresentations were material in that they related to concealment of 40% of the stock in the applicant corporation."

It is evident from the above-quoted and other portions of the Commission's final decision and from Commissioner Jett's dissent thereto that the majority of the Commission regarded the Supreme Court's opinion in *Federal Communications Commission* v. *WOKO, Inc.*, (hereinafter referred to as the WOKO case),[14] as applicable and controlling in the instant case. Certainly the wording of the Commission's final decision in this case seems unjustifiably geared so as to bring this case within the doctrine of the WOKO opinion. The majority of this court believes that a careful examination and comparison will disclose material factual distinctions which take the instant case beyond the purview of the WOKO opinion and thus reveal the error of the Commission in applying the WOKO doctrine to the facts of the present case.

In the WOKO case, as here, the Commission refused to renew the license of an existing radio broadcasting station and there, as here, the Commission based its refusal to renew on its conclusion that the station could not be entrusted with the responsibilities of a licensee because of the licensee's purposeful concealment of stock ownership and various stock transactions. Here the factual similarity between the two cases ceases, in our opinion. In the WOKO case, one Sam Pickard, a former member of the Federal Radio Commission and then a vice-president of Columbia Broadcasting System, had been instrumental in procuring for Station WOKO a CBS network affiliation much desired by that station in order to solve some of its financial difficulties. At Pickard's suggestion, he was rewarded for this and other efforts in behalf of the station by being given 24% of the licensee's outstanding capital stock, part of which Pickard directed to be given to Lawrence Lowman, another vice-president of CBS. Later this stock was transferred to Mrs. Pickard and two holding companies controlled by the Pickards, and still later to one R. K. Phelps, a brother-in-law of Mrs. Pickard. From the beginning, Pickard had requested that his ownership of the stock be kept secret since he would be personally embarrassed should his associates at CBS learn of it. He also suggested that there would be no need to disclose this ownership to the Commission since the Commission was interested only in knowing whether or not any of the stockholders were aliens. Pickard's requests for concealment of his stock ownership were honored by the licensee corporation with the result that, in the various reports and applications filed with the Commission by the licensee of WOKO, only the name of the record owner of the stock was given and the name of the beneficial owner (Pickard) was knowingly and purposefully withheld. It was this wilful concealment and purposely false

[14] 329 U. S. 223, 67 Sup. Ct. 213, 91 L. Ed. 204 (1946).

BLEED THROUGH – POOR

reporting of stock ownership plus certain false testimony given by WOKO's general manager at various Commission hearings which directly lead to the Commission's refusal to renew the WOKO license. On appeal to this court, we reversed.[15] Certiorari having been granted, the Supreme Court in turn reversed the decision of this court and upheld the Commission's refusal to renew the WOKO license.[16] As stated by the Commission in the above-quoted portion of its Conclusion in the present case, the opinion of the Supreme Court in the WOKO case held in substance that the Commission is justified in refusing to renew the license of a radio broadcasting station where there has been *wilful and knowing misrepresentations* of facts, material or immaterial, concerning its stock ownership. That is the law as established in the WOKO case and that is the law as it exists today. It was also the law at the time the Commission released its final decision refusing to renew the WORL license. It should be noted that the opinion of the Supreme Court in the WOKO case makes abundantly clear the purposeful nature of the concealment in that case by use of the terms "willingness to deceive", "deliberate falsity," and "systematic course of deception." Further, the record in the WOKO case clearly indicated the presence in that case of a definite motive for the wilful concealment and purposeful falsity practiced therein.

In the instant case, no motive for concealment has been established. The Commission's findings are devoid of any suggestion of evil motive. Indeed, the Commission's conclusion in this case concedes that the purpose for the alleged concealment "is not entirely clear." Moreover, and of even greater significance, the Commission's findings and the record itself as printed in the joint appendix are equally devoid of *any* evidence of wilfullness or, using the Supreme Court's language in the WOKO case, of "willingness to deceive." Appellee, while persistently urging that the record convincingly supports the findings and conclusion of the Commission, fails to call our attention to any single specific portion of the voluminous record before us which would justify the Commission's conclusion of wilfullness, nor have we by independent search discovered any such portion of the evidence. There is not before us now, as there was before us in the WOKO case, the question of materiality *vel non* of the facts concealed. That question was put to rest by the above-quoted part of the opinion of the Supreme Court in the WOKO case. We are now concerned with a determination

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[15] Our opinion in that case was written by Justice Wilbur K. Miller and accompanied by a short dissent by then Chief Justice Groner and appears *sub nomine WOKO, Inc.*, v. *Federal Communications Commission*, 80 U.S. App. D. C. 333, 153 F. 2d 623 (1946).

[16] *Supra*, footnote 14.

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whether from the facts of record in this case there is any substantial evidentiary basis for a conclusion of wilfullness and false misrepresentation in the legal sense. As indicated above, and for the additional reason that in the WOKO case there was false testimony given at Commission hearings, whereas in the instant case the witnesses before the Commission were completely candid in their testimony, we are constrained to hold that the instant case differs materially from the WOKO case and is factually distinguishable therefrom. The Commission was, therefore, in error in this case in placing heavy reliance upon the Supreme Court's WOKO opinion. We agree with Commissioner Jett who said in his dissent: "I do not feel that the record against WORL supports the finding that any of the parties are guilty of having made willful misrepresentations to the Commission." Hence we rule, as a matter of law, that the WOKO opinion of the Supreme Court is inapplicable in the present case and that the Commission erred in concluding to the contrary.

We also rule, for the same and other reasons, that the Commission acted arbitrarily, capriciously, and unreasonably in refusing to renew appellant's license to operate WORL where there was not only no *substantial* evidence to support its implied finding of wilful misrepresentation, but no evidence at all. The terms "misrepresentation", "concealment", "willingness to deceive", and "planned program of deception" appearing in the Commission's final decision in this case are all terms which, taken either in their ordinary or their technical sense, necessarily imply a purposeful, knowing, and active exercise of improper or bad intent. They are strong terms which exclude any concept of accidental misstatement or of innocent, unintentional mistake. Appellant strenuously urged before the Commission and now convincingly argues before us that it has at all times acted in good faith in dealing with the Commission and that the conceded mistakes which it has made with regard to the required reports to the Commission were never intentional or the result of a lack of good faith.[17] In the view of the majority of this court, the record amply supports appellant's protestations of good faith. True, the record is replete with evidence that appellant's agents were careless and inaccurate and, perhaps, lacking in good judgment as to the reports required by the Commission, but none of these characteristics in themselves imply bad faith and it is equally certain and of record that none of these characteristics were projected over to and affected the management and conduct of appellant's business as a radio broadcasting licensee. In fact, appellant's outstanding public service record and its progressively increasing financial stability—both matters of record in this case

[17] Counsel for appellant, in his oral argument before this court, struck perhaps the keynote of appellant's position in this respect when he stated: "We say we've never sinned; erred, yes, but never sinned!"

BLEED THROUGH – POOR

—expressly negative any such projection. The Commission in its final decision pointed with apparent disapproval to the failure of the corporation to declare dividends and to the "plowing back" of its profits for the years of 1937 to 1943.[18] We believe that, far from showing a lack of good faith or any mismanagement on the part of appellant, this is evidence of sound business judgment, where the corporation had theretofore been in financial difficulty, and demonstrates an awareness of its responsibilities and duties as a licensee and of its obligations to the public.

Failing in its efforts to specifically establish a lack of good faith on the part of appellant, appellee in its brief next attempts to show appellant's lack of qualifications as a licensee by resort to inference and presumption. In its brief, appellee states: "Appellant fails to recognize that a reckless disregard of the duties and responsibilities of a licensee manifested over a substantial period of time by gross carelessness and wilful disregard of the true facts known to the licensee or available to it, in making reports to the Commission, may as clearly demonstrate a want of qualifications to be a licensee as the making of misstatements for a revealed motive." The chief difficulty with this statement is that it presupposes "reckless disregard" of duties and "gross carelessness and wilful disregard" of facts by appellant which are not shown by the record. Nor is the absence in the record of evidence of wilful and reckless disregard cured by appellee's attempted analogy between this case and cases of imputed intent in torts or in criminal law because such allegedly analogous cases all require a showing of heedlessness of the foreseeable harmful consequences. Here there is no substantial evidence of any heedlessness and it is conceded that there have been and can be no harmful consequences flowing either to the Commission or to the public interest as a result of appellant's improper reports.

There is yet another reason for ruling as we do that the Commission acted arbitrarily in its refusal to renew the WORL license. Though not a matter of record in this case, it appears from appellant's brief that, on July 7, 1942, the Commission granted appellant's then pending application for renewal of the WORL license. It also appears from appellant's brief that the Commission had full knowledge, by means of reports filed by appellant and by means of a report submitted by one of the Commission's own legal staff in 1941, that Lafount and Sanford Cohen had, in 1937 and 1938, acquired a 60% or controlling interest in the voting stock of appellant corporation in alleged violation of Section 310(b) of the

[18] In the 29th Finding of Fact of its final decision the Commission stated: ". . . Moreover, although the evidence indicates that the station was increasingly profitable during the period 1937 to 1943, no dividends were paid out, but instead all profits were retained in the broadcasting company to build up that organization for the benefit of the present stockholders of record."

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Act.[19] which prohibits transfer of control of a licensee without express Commission consent. It thus appears that the Commission condoned in 1942 some of the very same actions of appellant that it is now condemning and upon which the refusal to renew is being based. Though counsel for appellee, in oral argument before this court denied categorically such knowledge on the part of the Commission in 1942, yet it is noteworthy that no further explanation to support the Commission's claim of no knowledge is attempted and appellee's brief is completely silent as to appellant's contention in this respect. In effect, then, appellant's claim is uncontroverted and is further indication (though not evidence) of the arbitrariness of the Commission's refusal to renew.

We wish it clearly understood that we are *not* ruling that, once forgiven, a licensee should always thereafter be forgiven for irregularity in compliance with statute or with rule or regulation. The fallacy of such a rule is obvious. Nor are we ruling that a licensee can with impunity disregard or disobey statute, rule, or regulation. Further, we do not question the power of the Commission, within statutory bounds, to adopt and administer a stricter policy of enforcement of its rules and regulations with regard to revocation or renewal of broadcasting licenses.[20] But the Commission, and this court on review, must constantly be guided by the prevailing purpose of the Communications Act in ascertaining the result in each case which will best serve the public interest. In such a determination there is not place for the arbitrary application of pointless technicality unsupported by substantial evidence. We hold, therefore, that, as to this particular case, taking into consideration all of the circumstances discussed above, the Commission's decision of April 21, 1947, was improper as a matter of law and lacked the support of substantial evidence and was the result of arbitrary and capricious action by the Commission. Accordingly, pursuant to 402(e) of the Act, the decision of the Commission is reversed and the case remanded to the Commission to carry out the judgment of this court.

In this view of the case, it is unnecessary to make any decision at this time as to appellant's claim that the Commission violated the statute and its own rules in denying a hearing on the joint application for transfer of control to Bitner. Accordingly, we make no decision as to this contention.

Reversed and remanded.

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[19] 48 Stat. 1086 (1934), 47 U.S.C. § 310 (b) (1946).

[20] For a good summary and analysis of recent radio cases showing a growing trend toward stricter enforcement in just such cases as this, see *Note* (1947) 15 Geo. Wash. L. Rev. 425.

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EDGERTON, J., *dissenting*: The Commission found in effect that appellant had repeatedly made false statements to the Commission, and that it had done so willfully. I do not see how either of these findings can be thought to lack support. Their support includes the following facts, among others. In 1937, to show that appellant was financially qualified for increased facilities, it filed a "Financial Statement" that included under Assets "Cash in Banks $25,362.11." It is not only proved but conceded that appellant's cash in banks was actually $362.11. Appellant overstated its assets by $25,000 net. It did this consciously and deliberately. It does not claim to have believed it had the missing $25,000, either in banks or elsewhere, in cash or in any other form. Appellant's witness says the money was "all arranged for" and that "had the pending application been granted, the money would have been available for the improvements at once . . . It was not shown as a liability, which was unfortunate." But the witness's confidence, however well founded, in the availability of a loan, does not obviate the fact that a false statement was deliberately made. Other misrepresentations related to stock ownership.

Even if appellant's falsehoods had been merely reckless or negligent rather than willful, they would still have supported the Commission's finding that "the continued series of misrepresentations and concealments . . . demonstrates that the applicant does not possess the necessary character qualifications of a licensee of a radio station, and that the public interest, convenience and necessity will therefore not be served by a grant of a renewal of license to the applicant." The Communications Act does not forbid the Commission to regard mere indifference to truth as contrary to the public interest. Both the Act and the WOKO case require us to affirm its decision.

United States Court of Appeals for the District of Columbia Circuit,
October Term, 1948

No. 9690

Filed Nov. 24, 1948, Joseph W. Stewart, Clerk.

BROADCASTING SERVICE ORGANIZATION, INC., APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

Appeal from the Federal Communications Commission.
Before: EDGERTON, CLARK and WILBUR K. MILLER, JJ.

Judgment

This cause came on to be heard on the transcript of the record from the Federal Communications Commission, and was argued by counsel.

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On consideration whereof, It is now here ordered and adjudged by this Court that the decision of the said Federal Communications Commission appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said Federal Communications Commission for further proceedings not inconsistent with the opinion of this Court.

Per Circuit Judge CLARK.

Dated November 24, 1948.

Dissenting opinion by Circuit Judge EDGERTON.

In the United States Court of Appeals for the District of Columbia Circuit

No. 9690

Filed Jan. 4, 1949. Joseph W. Stewart, Clerk.

BROADCASTING SERVICE ORGANIZATION, INC., APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

Designation of Record

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint Appendix.
2. Opinion of the United States Court of Appeals for the District of Columbia Circuit.
3. Judgment of the United States Court of Appeals for the District of Columbia Circuit.
4. Designation of record.
5. Clerk's certificate.

PHILIP B. PERLMAN,
Solicitor General of the United States of America.
BENEDICT P. COTTONE,
General Counsel, Federal Communications Commission.
MAX GOLDMAN,
Assistant General Counsel,
Federal Communications Commission.

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Acknowledgment of Service

Receipt of a true copy of Appellee's "Designation of Record" is hereby acknowledged this — day of January, 1949.

BEN S. FISHER,
Counsel for Appellant.

United States Court of Appeals for the District of Columbia

I, JOSEPH W. STEWART, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages numbered from 1 to 621 both inclusive, constitute a true copy of the joint appendix to the briefs of the parties and the proceedings of the said Court of Appeals as designated by counsel for appellee in the case of: Broadcasting Service Organization, Inc., Appellant, v. Federal Communications Commission, Appellee, No. 9690, January Term, 1949, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 5th day of January, A.D. 1949.

JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia Circuit.

By C. PRESTON GAINOR,
Assistant Clerk.

[SEAL]

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Supreme Court of the United States

October Term, 1948

No. 584

Order allowing certiorari

Filed April 18, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is transferred to the summary docket and assigned for argument on May 9 following the argument in Nos. —— Original, United States vs. Louisiana and United States vs. Texas, which are also specially assigned for that day.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 584

FEDERAL COMMUNICATIONS COMMISSION,
PETITIONER

v.

BROADCASTING SERVICE ORGANIZATION, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the Federal Communications Commission, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled cause on November 24, 1948, reversing a decision of the Commission which denied the respondent's application for a renewal of license of station WORL, a standard broadcast station in Boston, Massachusetts.

OPINIONS BELOW

The Decision and Order of the Federal Communications Commission (R. 539–568, 600–601)

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have not yet been reported. The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 608–620) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on November 24, 1948 (R. 620–621). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the court below, in insisting on direct and express evidence of wilfulness or recklessness and in substituting its judgment for that of the Commission as to the adequacy of the licensee's explanations for its derelictions, improperly withheld from the Federal Communications Commission the authority to deny a renewal of license to a licensee which, over a six-year period of time and on numerous occasions, had admittedly misstated and failed to reveal facts as to its stock ownership and financial status.

STATUTE INVOLVED

The pertinent provisions of the Communications Act of 1934, 48 Stat. 1064, as amended, 47 U. S. C. 151, *et seq.* (hereinafter referred to as the "Communications Act"), are set forth in the Appendix, *infra,* pp. 23–26.

STATEMENT

On May 27, 1944, respondent, Broadcasting Service Organization, Inc., filed an application

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with the Federal Communications Commission for renewal of its license for operation of radio station WORL, Boston, Massachusetts, expiring on August 1, 1944 (R. 14–15). The Commission was unable, upon examination of the application, to determine that the public interest, convenience or necessity would be served by a renewal of respondent's license. Accordingly, on July 8, 1944, it designated the application for hearing, pursuant to Section 309 (a) of the Communications Act of 1934, as amended (R. 16–18).

Hearings were held in September, October, November and December of 1944 (R. 540). At their conclusion, a proposed decision was issued (R. 475–502). Exceptions were filed to this proposed decision (R. 503–517), a brief was filed by the respondent (R. 518–534), and oral argument was had (R. 540, 609). A final decision was then entered (R. 539–564), Commissioner Jett dissenting (R. 565–568); but a rehearing was sought and granted (R. 569–597, 598–599). On rehearing, the Commission reaffirmed its prior decision (R. 600–601), Commissioner Jett again dissenting (R. 602–605).

The Commission's decision consists in the main of a section entitled "Findings" which are largely findings of subsidiary facts (R. 541–557) and a section entitled "Conclusion" in which are contained the major part of the Commission's findings of ultimate fact (R. 557–564). A summary

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of the pertinent facts thus found by the Commission is as follows:[1]

Beginning in 1937, a series of arrangements were made pursuant to which the interests of stockholders of the respondent, Crockwell, Phelan, Eynon, and Nordblom were transferred in whole or in part to Harold Lafount, Sanford H. Cohen and George Cohen (R. 541–542). The Cohens had been engaged in the practice of law since 1911, representing among others, Arde Bulova whose radio investments amount to approximately $2,000,000 (R. 541–542; 226–227, 279). Lafount, a business man had, from 1927 to 1934, been a member of the Federal Radio Commission, and from 1934 on, has been in charge of Bulova's radio interests (R. 542; 21–23).

Over the entire period of control of the licensee by its present stockholders, from March 1937, when they first acquired a majority of the voting stock of the licensee corporation, until November 1943, the pattern of the licensee's dealings with the Commission was one of consistent misrepresentation and delay. The derelictions of the respondent related to no less than six transactions or groups of transactions involving wilful concealments and misstatements, or inordinate delay in the making of reports. These transactions,

[1] In this petition, record references preceding the semicolon are the Commission's findings and conclusions; references following the semicolon are to the supporting evidence.

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with respect to which the Commission made detailed findings, are:

1. (a) The original transaction of March 25, 1937, involving the purchase of 700 shares of Class B stock by Lafount and the Cohens and the failure to report a transfer of 300 of these shares to the Cohens until November 1943. (b) A related purchase of 100 shares of Class B stock by George Cohen from Nordblom in September 1940 which was also not reported until November 1943 (R. 542–547, 549–553, 554–559, 560–563).

2. A statement introduced and verified by Lafount in the hearing on appellant's 1937 application for increase in the power and hours of operation of Station WORL (Docket No. 4206) showing cash in the bank of $25,362, when, in fact, as Lafount admitted at the hearing, there was at that time only $362.11 in the bank, and the appellant did not have the other $25,000 as an asset in any manner or form (R. 553–554, 559).

3. The ultimate purchase by Sanford Cohen of 200 shares of Class B stock, pledged by Crockwell as security for a loan of $5,000 from Bulova, after foreclosure by Bulova. Although Crockwell himself sold nothing to Sanford Cohen and received nothing from him, and Cohen assumed liability on the $5,000 loan in acquiring the shares from Bulova, the transaction was reported to the Commission as a transfer from Crockwell to Cohen for a total consideration of $100 paid to

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Crockwell (R. 547–548, 559; 35, 137–139, 140, 231, 268–270, 435–438).

4. The purchase by Lafount at public auction of 900 shares of Class A stock from Crockwell on March 8, 1939, for $2,450. No report of such transaction was made until April 15, 1940, over a year later (R. 548; 37–38, 98–99, 210–212, 355).

5. The transfer of 100 shares of Class A stock from Crockwell to one Lester Endlar on June 29, 1938. No report of the name of the transferor, the date of transfer, or the consideration paid for the transfer was ever filed with the Commission (R. 548; 98, 354–355, 358).

6. The sale and delivery on September 24, 1940, of 100 shares of Class A stock from Endlar to Lafount for $3,100. This sale was not reported to the Commission until May 1, 1941, and in that report, March 31, 1941, was given as the date of the transfer and $3,500 as the "amount received" by Endlar (R. 548–549; 38–39, 100, 207–208, 355).

Of these various transactions, those involving the failure to report the 400 shares of stock acquired from Nordblom by Sanford and George Cohen in March 1937, and September 1940, and the overstatement of respondent's cash assets by $25,000 in its 1937 application for a construction permit for modification of station WORL's license, most clearly demonstrate respondent's planned program of deception.

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A. *Stock acquisitions.*—With respect to the failure to report the Cohens' acquisition of the 400 shares of Class B voting stock, the hearing record disclosed, and the Commission found, that on March 25, 1937, Lafount and the Cohens acting jointly acquired 700 shares (70%) of the voting stock of the respondent corporation, of which 400 shares were acquired for Lafount and 300 shares were to be divided among the Cohen brothers (R. 544–545, 557; 26–27, 30, 396). The price actually paid for these shares was $52,500 (R. 544; 27, 29). However, at the time, only the transfer of the 400 shares to Lafount for a stated price of $30,000 was reported to the Commission (R. 546, 558; 399–400, 446). No report covering the transfer of the other 300 shares was filed until December 2, 1943, and, at that time, it was reported as a transfer occurring on November 27, 1943, with a total sales price of $5,000 (R. 550–551; 440), thus resulting in a total reported consideration of $35,000 for shares which in fact cost $52,500. An additional 100 shares of voting stock acquired from Nordblom for George Cohen in September 1940, for the payment of $1,500 (R. 549; 140–141, 144–145) was similarly not reported to the Commission until November 17, 1943 (R. 549; 439).

The 300 shares purchased for the Cohens in 1937 from Robert C. Nordblom were made out in the name of Nordblom, endorsed in blank by him,

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and turned over to the Cohen brothers pursuant to an oral understanding and agreement between Lafount and Nordblom (R. 544, 555; 30, 97, 105, 106, 357, 397–398). Nordblom received the agreed purchase price for the shares and, pursuant to the agreement, continued to appear as a stockholder and director of record on the books of the respondent corporation and to vote the stock as a courtesy and convenience to the Cohens (R. 553, 558; 32, 102–103, 328–329). The arrangement was revocable at the will of the Cohens who at all times had physical possession of the stock (R. 553; 248). This condition continued from March 25, 1937, to November 1943, during which period of time no efforts were ever made by Lafount or the Cohens to rescind the transaction (R. 550; 117–118, 154–158, 228–229, 249–252). During this period, the 300 shares were consistently reported to the Commission as being owned by Nordblom (R. 551–553, 558; 409–435). The true facts were finally reported to the Commission in 1943, but only after a select committee of the House of Representatives had held an inquiry into the affairs of Station WORL (R. 562; 165).

The 100 shares of stock acquired for George Cohen in 1940 similarly remained in Nordblom's name on respondent's books and in all reports to the Commission, although the certificates had been endorsed in blank and turned over to George Cohen (R. 551, 558; 426–429).

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In sum, the Commission found that during the six years following March 25, 1937, the respondent filed seventeen reports and applications knowingly misrepresenting under oath that Nordblom continued to be the owner of the 300 shares of stock sold to the Cohens on that date (R. 558; 409–435). On at least four occasions, Lafount filed with the Commission statements to the effect that no written or oral contracts existed concerning the voting rights of any stock or the ownership or control of the station, or rights and interests therein, despite the existence of an oral agreement between Lafount and Nordblom that the stock owned by the Cohens was to be reissued in Nordblom's name, and that he was to vote the stock as a shareholder and serve as a director as a courtesy and convenience to the Cohens (R. 558–559; 430, 431, 433–438). In six reports filed with the Commission since July 25, 1937, in purported compliance with Rule 43.1 and its predecessors,[2] the applicant gave false information as to one or more of the following details: date of sale, date of acquisition, consideration, transferror, transferee (R. 559; *e. g.*, 399–400, 436–438, 355, 439–440). And two transfers which should have been reported under this Rule were never reported (R. 559; *e. g.*, 358, 137–140).

[2] The substance of the report requirements of Rule 43.1 and its predecessors is set out in the Commission's findings at R. 556–557. See also R. 435, 437–438.

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B. *Explanations offered by respondent.*—The Commission also found that the explanations (R. 554–556) advanced at the hearing by Lafount and the Cohens for the failure to report the transfer of the 400 shares purchased in 1937 and 1940 from Nordblom for the Cohens were contrary to the uncontradicted testimony of Nordblom (R. 550, 556; 327–328) and were otherwise inconsistent with the facts appearing in the record, and could therefore not serve as acceptable explanations for respondent's failure to report the transactions until November 1943 (R. 556, 558–559, 560–562). The Commission found that in spite of respondent's claim that the transactions had not been reported because Lafount and the Cohens honestly believed that the transfer of the stock was not complete until its formal transfer on the books of the corporation in 1943, Nordblom, from the moment he sold the shares and received payment therefor, never had possession or the right to dispose of the stock but, on the contrary, possession and the right of disposal was with the Cohens (R. 551; 248).

The Commission also found that the claim that respondent delayed in transferring the stock on the books of the corporation from Nordblom to the Cohens because, before the stock could be distributed between the two Cohens, they were advised that Nordblom was dissatisfied with the deal and therefore refused to allow the stock to be transferred to their name until this matter (as

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well as a later complaint by a Miss Whitwell (R. 555)) could be settled, was in direct conflict with the testimony of Nordblom that he was never dissatisfied with the 1937 transaction and never expressed any such dissatisfaction (R. 550, 556; 327–328). Finally, the Commission found that the claim of good faith on the part of the respondent, i. e., that if its actions were erroneous they were the product of honest mistakes, was completely inconsistent with the fact that during the period in which the Cohens held the stock which had been endorsed by Nordblom, the respondent not only repeatedly stated that Nordblom was the sole owner of the stock but expressly denied on numerous occasions that there was any outstanding contract or understanding affecting the ownership or control of such stock (R. 558–559, 560–561; 430, 431, 433–438).

C. *Statement as to cash assets.*—With respect to the $25,000 overstatement of respondent's cash assets in connection with its 1937 application for a construction permit to modify its station license at an estimated cost of approximately $20,000, the Commission found, on the basis of the testimony, that respondent had introduced a balance sheet which Lafount testified had been prepared under his supervision, showing that respondent had assets of $25,362 in the form of cash in banks, and corporate liabilities of less than $700 (R. 553–554; 401). In fact, respondent knew it had only $362.11 in the banks, and the

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remaining $25,000, which respondent stated it had on hand, was admittedly only the promise of a loan from the stockholders, which, when made, would have increased respondent's corporate liabilities by $25,000 more than acknowledged on the balance sheet submitted to show respondent's financial ability to carry out the construction for which it sought a permit (R. 554, 559; 298–299, 345–348, 352, 441–442).

D. *The Commission's ultimate findings and the appeal.*—On the basis of these and related subsidiary facts disclosed at the hearing, the Commission determined, in its final decision, that the respondent had wilfully and knowingly submitted false information to the Commission concerning the ownership of its stock and its financial status and had withheld other information which, under the Communications Act and the Commission's Rules and Regulations, it was under an obligation to report to the Commission. The Commission concluded, therefore, that the respondent could not be entrusted with the responsibilities of a station licensee and that a grant of its application for renewal of station license would not serve the public interest, convenience, or necessity (R. 563–564). Accordingly an order was entered denying the application for renewal of license (R. 600–601).

On November 3, 1947, respondent took an appeal to the United States Court of Appeals for

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the District of Columbia Circuit from the order of the Commission denying its application for renewal of license (R. 1). On November 24, 1948, a divided Court reversed the order of the Commission (R. 608). Justice Clark delivered the opinion of the Court in which Justice Miller concurred (R. 608–619); Justice Edgerton dissented in a separate opinion (R. 620).

REASONS FOR GRANTING THE WRIT

Little more than two years after this Court's reversal of the court below in *Federal Communications Commission* v. *WOKO, Inc.*, 329 U. S. 223, that court has once again denied to the Commission the power to refuse the renewal of a license to a licensee which had, over a period of years, made misrepresentations of fact to the Commission. The putative distinctions upon which the court below sought to rest its rejection of the *WOKO* decision are, in the Government's view, patently untenable. If the Government is correct in this view, it is plain that the supervisory jurisdiction of this Court must be exercised in order to vindicate the precedential effect of its rulings and make it clear that this Court's rulings are not to be denied application to cases which, though involving slightly variant factual patterns, raise legal issues identical to those already authoritatively decided.

1. Although the court below does not question the findings of the Commission that the respond-

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ent, over a period of six years and on numerous occasions, misrepresented facts in reports and statements required by, and made to, the Commission, and in addition, delayed the filing of other statements for substantial periods of time, it has held that the Commission's finding of a "planned program of deception" (R. 559) is not only not supported by substantial evidence, but that it is supported by "no evidence at all" (R. 617). Two reasons are offered in support of this holding and as grounds for distinguishing this Court's *WOKO* decision: First, that in this case, there is no direct evidence of wilfulness, and that no motive for concealment has been established (R. 616–617), and second, that the respondent "convincingly" argued "that it has at all times acted in good faith in dealing with the Commission and that the conceded mistakes which it has made with regard to the required reports to the Commission were never intentional or the result of a lack of good faith" (R. 617). We shall discuss these grounds of decision in the order of their statement.

a. There is no warrant whatever for the holding of the court below that the Commission may not infer that a licensee's course of conduct in violation of the Communications Act or the Commission's Rules and Regulations was wilful or deliberate in the absence of direct evidence of a purpose to commit the specific violations or the disclosure of a specific motive for such violations.

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To hold that a course of admitted falsifications and concealments, either entirely unexplained or explained by testimony demonstrably unworthy of belief, is insufficient basis from which to draw an inference of wilfulness, runs counter to decisions of this and other courts that administrative agencies may infer a purpose to violate statutes or rules or regulations from circumstantial evidence which reasonably supports such inferences. *National Labor Relations Board* v. *Link Belt Co.*, 311 U. S. 584, 597; *F. W. Woolworth Co.* v. *National Labor Relations Board*, 121 F. 2d 658, 660 (C. A. 2). As Judge Parker, speaking for the Court of Appeals for the Fourth Circuit in *Hartsell Mills Co.* v. *National Labor Relations Board*, 111 F. 2d 291, 293, has stated: "direct evidence of a purpose to violate the statute is rarely obtainable; and * * * where the finding of the Board is supported by circumstances from which the conclusion of discriminatory discharge may legitimately be drawn, it is binding upon the courts." Certainly, as Edgerton J., dissenting below stated (R. 620): "Even if appellant's falsehoods had been merely reckless or negligent rather than wilful, they would still have supported the Commission's finding that 'the continued series of misrepresentations and concealments * * * demonstrates that the applicant does not possess the necessary character qualifications of a licensee of a radio station, and that the public interest, convenience

and necessity will therefore not be served by a grant of a renewal of license to the applicant'. The Communications Act does not forbid the Commission to regard mere indifference to truth as contrary to the public interest." Any other conclusion would impose intolerable barriers to the enforcement of statutes by administrative adjudication.

b. The Commission expressly found that the respondent had failed to offer any explanation for many of its numerous derelictions which would adequately support its protestations of good faith, and, in those cases in which the respondent had attempted to explain the reason for its actions, that the explanations were inconsistent with undisputed evidence in the record and, for reasons set forth in the Commission's decision, manifestly unacceptable (R. 550, 551, 556, 558–559, 560–561). With neither mention nor analysis of the Commission's detailed findings, the court below arrived at an independent conclusion that respondent "erred yes, but never sinned!" (R. 617, note 17). In this connection, the court below has failed to heed this Court's admonition in the *WOKO* case that "the fact that [the courts] might not have made the same determination on the same facts does not warrant a substitution of judicial for administrative discretion since Congress has confided the problem to the latter". 329 U. S. at 229.

The *WOKO* decision announced no new or special rule of law to be narrowly confined to the

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precise circumstances of that case. *National Labor Relations Board* v. *Nevada Copper Co.*, 316 U. S. 105, 106; *Donaldson* v. *Read Magazine*, 333 U. S. 178; *National Labor Relations Board* v. *Southern Bell Telephone & Telegraph Co.*, 319 U. S. 50, 60; *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U. S. 793, 800. In *National Labor Relations Board* v. *Link Belt Co.*, 311 U. S. 584, 597, this Court observed that "Congress entrusted the Board, not the Courts, with the power to draw inferences from the facts." The decision of the court below may properly be characterized by the observation of this Court in *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73 that:

> "The findings of the Commission as to facts, if supported by testimony, shall be conclusive." * * * The Court of Appeals, though professing adherence to this mandate, honored it, we think, with lip service only. In form the court determined that the finding of unfair competition had no support whatsoever. In fact what the court did was to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences. * * *

2. Other grounds advanced by the court below in support of its decision are likewise squarely inconsistent with the decision of this Court in *Federal Communications Commission* v. *WOKO, Inc.*, 329 U. S. 223. Its reliance, in connection

with the respondent's alleged good faith, on the "outstanding public service record" and "increasing financial stability" of the respondent (R. 617) is hardly consonant with this Court's statement in the *WOKO* case that "It may very well be that this Station has established such a standard of public service that the Commission would be justified in considering that its deception was not a matter that affected its qualifications to serve the public. But it is the Commission, not the courts, which must be satisfied that the public interest will be served by renewing the license." 329 U. S. at 229.

Similarly, the reference of the court below to the alleged concession "that there have been and can be no harmful consequences flowing either to the Commission or the public interest as a result of appellant's improper reports" (R. 618), flies in the face of this Court's statement in the *WOKO* case that "The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones." 329 U. S. at 227.

Finally, the court below confessedly went outside of the record to find that, in 1942, the Commission granted the respondent's renewal application with "full knowledge" that Lafount and Sanford Cohen had acquired a controlling interest in respondent's voting stock in "alleged

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violation of Section 310 (b) of the Act which prohibits transfer of control of a licensee without express Commission consent" (R. 618–619). But even if this alleged condonement of a violation of Section 310 (b) were properly a matter of record, it would be irrelevant to the issue at bar. The denial of renewal here involved was not rested on a violation of Section 310 (b); any condonement of an illegal transfer could not in any way affect the propriety of the Commission's (1) treating as a bar to renewal the fact that respondent had, prior to 1942, *and thereafter,* concealed other facts, and (2) concluding that this conduct, viewed as a whole, demonstrated that a renewal of respondent's license would not serve the public interest. In any event, "the very fact that temporizing and compromising with deception seemed not to discourage it, may have led the Commission to the drastic measures here taken to preserve the integrity of its own system of reports." *Federal Communications Commission* v. *WOKO, Inc.,* 329 U. S. 223, 228.

3. Certiorari is warranted in this case not only on the ground, previously discussed, that the court below has refused to defer to a recent decision of this Court virtually indistinguishable from the case at bar, but also on the additional ground that the rationale of the decision below is such that, if it is allowed to stand, the exercise by administrative agencies generally of pow-

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ers virtually identical to that here claimed by the Commission will be brought into serious question. See *supra*, pp. 16–17.

Not only does the court below have exclusive jurisdiction of appeals from Commission decisions granting or denying radio station licenses or renewals of licenses under Section 402 (b) of the Communications Act, but it is a court which is strategically placed for the review of other administrative orders. Most suits seeking to enjoin officials of the Federal Government may be maintained only in the District of Columbia, the official residence of the officers concerned. And under many statutes, aggrieved parties have the option of bringing proceedings to review administrative decisions in the Court of Appeals for the District of Columbia Circuit.[3] The decisions of that court thus are of major importance in this field.

On a number of occasions, this Court has regarded the departure by a court of appeals from the accepted principles of judicial review and the substitution of its views for those of an administrative agency as sufficient to warrant the granting of a writ of certiorari. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 586; *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 208; *Na-*

[3] E. g., National Labor Relations Act, 29 U. S. C., Supp. I, 160 (f); Fair Labor Standards Act, 29 U. S. C. 210; Securities Act, 15 U. S. C. 77i (a); Public Utility Holding Company Act, 15 U. S. C. 79x (a).

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tional Labor Relations Board v. *Nevada Consolidated Copper Corp.,* 316 U. S. 105; *National Labor Relations Board* v. *Automotive Maintenance Machinery Co.,* 315 U. S. 282; *National Labor Relations Board* v. *Southern Bell Telephone Co.,* 319 U. S. 50. When, as here, the court involved is one playing so vital a role in the review of administrative action, there is even more need for supervision by this Court. This is particularly true since the instant case is not an isolated instance of the departure by the court below from these accepted principles. See, *e. g., WOKO, Inc.* v. *Federal Communications Commission,* 153 F. 2d 623, reversed, 329 U. S. 223; *Lamb* v. *Patterson,* 154 F. 2d 319, reversed, 329 U. S. 539; *Santa Fe Pac. R. Co.* v. *Ickes,* 153 F. 2d 305, reversed *sub nom. Krug* v. *Santa Fe P. R. Co.,* 329 U. S. 591; *Agnew* v. *Federal Reserve Board,* 153 F. 2d 785, reversed, 329 U. S. 441; *Liberty Mut. Ins. Co.* v. *Cardillo,* 154 F. 2d 529, reversed, 330 U. S. 469; *Hannegan* v. *Read Magazine,* 158 F. 2d 542, reversed, *sub nom. Donaldson* v. *Read Magazine,* 333 U. S. 178.

In order to correct a similar trend, this Court granted certiorari in *National Labor Relations Board* v. *Waterman Steamship Corp.,* 309 U. S. 206, 208. But the trend in the court below has persisted despite repeated reversals, as the instant case shows.[4] We submit that the decision

[4] Compare *Dorsey* v. *Kingsland* (App. D. C.), No. 9572, decided January 26, 1949, slip opinion, pp. 4, 6.

below constitutes so extreme a departure from accepted legal principles that it should not be permitted to stand without review by this Court.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

BENEDICT P. COTTONE,
General Counsel,
Federal Communications Commission.

FEBRUARY 1949

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APPENDIX

The pertinent provisions of the Communications Act of 1934, c. 652, 48 Stat. 1064, as amended May 20, 1937, c. 229, 50 Stat. 189, 47 U. S. C. 151, *et seq.* are as follows:

SEC. 308. (a) The Commission may grant licenses, renewal of licenses, and modification of licenses only upon written application therefor received by it: *Provided, however,* That in cases of emergency found by the Commission, licenses, renewals of licenses, and modifications of licenses, for stations on vessels or aircraft of the United States, may be issued under such conditions as the Commission may impose, without such formal application. Such licenses, however, shall in no case be for a longer term than three months: *Provided further,* That the Commission may issue by cable, telegraph, or radio a permit for the operation of a station on a vessel of the United States at sea, effective in lieu of a license until said vessel shall return to a port of the continental United States.

(b) All such applications shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used;

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and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.

* * * * *

SEC. 309. (b) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein.

(2) Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act.

(3) Every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof.

* * * * *

SEC. 310. (b) The station license required hereby, the frequencies authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or in-

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directly by transfer of control of any corporation holding such license, to any person, unless the Commission shall, after securing full information, decide that said transfer is in the public interest, and shall give its consent in writing.

* * * * *

SEC. 312. (a) Any station license may be revoked for false statements either in the application or in the statement of fact which may be required by section 308 hereof, or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application, or for failure to operate substantially as set forth in the license, or for violation of or failure to observe any of the restrictions and conditions of this Act or of any regulation of the Commission authorized by this Act or by a treaty ratified by the United States: *Provided, however,* That no such order of revocation shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed revocation, has been given to the licensee. Such licensee may make written application to the Commission at any time within said fifteen days for a hearing upon such order, and upon the filing of such written application said order of revocation shall stand suspended until the conclusion of the hearing conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of revocation.

* * * * *

SEC. 402. (b) An appeal may be taken, in the manner hereinafter provided, from decisions of the Commission to the Court

of Appeals of the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

(2) By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

(3) By any radio operator whose license has been suspended by the Commission.

* * * * *

SEC. 402. (e) At the earliest convenient time the court shall hear and determine the appeal upon the record before it, and shall have power, upon such record, to enter a judgment affirming or reversing the decision of the Commission, and in event the court shall render a decision and enter an order reversing the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court: *Provided, however,* That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 240 of the Judicial Code, as amended, by appellant, by the Commission, or by any interested party intervening in the appeal.

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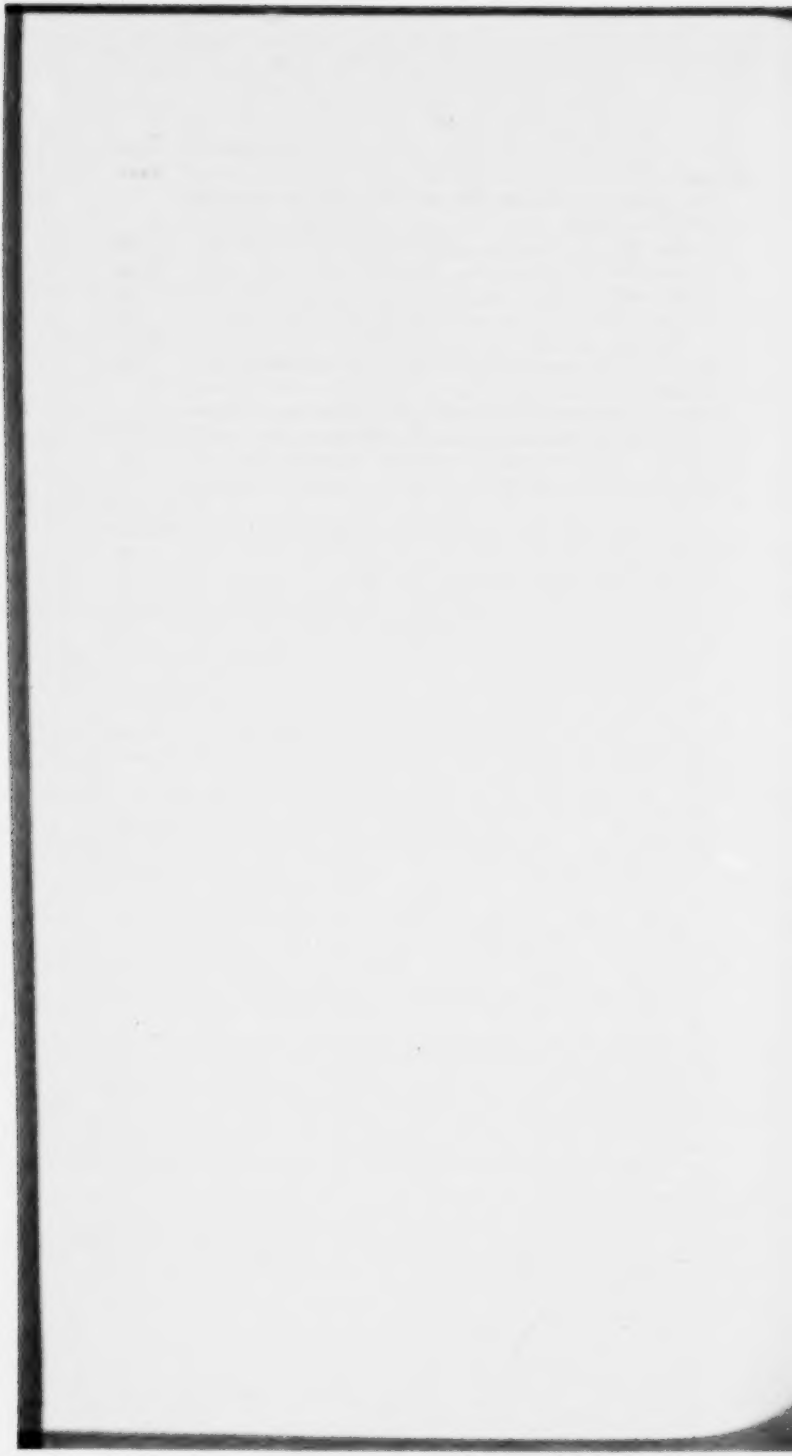

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 584

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

v.

BROADCASTING SERVICE ORGANIZATION, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL COMMUNICATIONS COMMISSION

OPINIONS BELOW

The decision and order of the Federal Communications Commission have not yet been reported (R. 539–568). The opinions in the United States Court of Appeals for the District of Columbia Circuit have not yet been reported (R. 608–620).[1]

JURISDICTION

The judgment of the Court of Appeals was entered on November 24, 1948 (R. 620–621). The petition for a writ of certiorari was filed on Feb-

[1] These opinions have been printed, however, in 3 Pike and Fischer, *Radio Regulation*, p. 979, and 4 Pike and Fischer, *Radio Regulation*, p. 2093.

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ruary 21, 1949, and granted on April 18, 1949, in an order transferring the case to this Court's summary docket (R. 623). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the court below, in insisting on direct and express evidence of wilfulness or recklessness and in substituting its judgment for that of the Commission as to the adequacy of the licensee's explanations for its derelictions, improperly withheld from the Federal Communications Commission the authority to deny a renewal of license to a licensee which, over a six-year period of time and on numerous occasions, had admittedly misstated and failed to reveal facts as to its stock ownership and financial status.

STATUTE INVOLVED

The pertinent provisions of the Communications Act of 1934, 48 Stat. 1064, as amended, 47 U. S. C. 151, *et seq.* (hereinafter referred to as the "Communications Act"), are set forth in Appendix A, *infra,* pp. 78–82.

STATEMENT

On May 27, 1944, respondent, Broadcasting Service Organization, Inc., filed an application with the Federal Communications Commission for renewal of its license for operation of radio station WORL, Boston, Massachusetts, expiring on August 1, 1944 (R. 14–15). The Commission was

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unable, upon examination of the application, to determine that the public interest, convenience or necessity would be served by a renewal of respondent's license. Accordingly, on July 8, 1944, it designated the application for hearing, pursuant to Section 309 (a) of the Communications Act of 1934, as amended (R. 16–18).

Hearings were held in September, October, November and December of 1944 (R. 540). At their conclusion, a proposed decision was issued (R. 475–502). Exceptions were filed to this proposed decision (R. 503–517), a brief was filed by the respondent (R. 518–534), and oral argument was had (R. 540, 609). A final decision was then entered (R. 539–564), Commissioner Jett dissenting (R. 565–568); but a rehearing was sought and granted (R. 569–597, 598–599). On rehearing, the Commission reaffirmed its prior decision (R. 600–601), Commissioner Jett again dissenting (R. 602–605).

The Commission's decision consists in the main of a section entitled "Findings" which are largely findings of subsidiary facts (R. 541–557) and a section entitled "Conclusion" in which are contained the major part of the Commission's findings of ultimate fact (R. 557–564). A summary of the pertinent facts thus found by the Commission is as follows:[2]

[2] In this brief, record references preceding the semicolon are to the Commission's findings and conclusions; references following the semicolon are to the supporting evidence.

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Beginning in 1937, a series of arrangements were made pursuant to which the interests of stockholders of the respondent, Crockwell, Phelan, Eynon, and Nordblom were transferred in whole or in part to Harold Lafount, Sanford H. Cohen and George Cohen (R. 541–542).[3] The Cohens had been engaged in the practice of law since 1911, representing among others, Arde Bulova whose radio investments amount to approximately $2,000,000 (R. 541–542; 226–227, 279). Lafount, a business man had, from 1927 to 1934, been a member of the Federal Radio Commission, and from 1934 on, has been in charge of Bulova's radio interests (R. 542; 21–23).

Over the entire period of control of the licensee by its present stockholders, from March 1937, when they first acquired a majority of the voting stock of the licensee corporation, until November 1943, the pattern of the licensee's dealings with the Commission was one of consistent misrepresentation and delay. The derelictions of the respondent related to no less than six transactions or groups of transactions involving wilful concealments and misstatements, or inordinate delay in the making of reports. These transactions, with respect to which the Commission made detailed findings are:

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[3] This series of transactions is set out in tabular form in Appendix B, *infra*, pp. 88–89.

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1. (a) The original transaction of March 25, 1937, involving the purchase of 700 shares of Class B stock by Lafount and the Cohens and the failure to report a transfer of 300 of these shares to the Cohens until November 1943, and the reporting of $35,000 as the total purchase price for the 700 shares which actually cost $52,500. (b) A related purchase of 100 shares of Class B stock by George Cohen from Nordblom in September 1940 which was also not reported until November 1943. (R. 542–547, 549–553, 554–559, 560–563.)

2. A statement introduced and verified by Lafount in the hearing on appellant's 1937 application for increase in the power and hours of operation of Station WORL (Docket No. 4206) showing cash in the bank of $25,362, when, in fact, as Lafount admitted at the hearing, there was at that time only $362.11 in the bank, and the appellant did not have the other $25,000 as an asset in any manner or form (R. 553–554, 559).

3. The ultimate purchase by Sanford Cohen of 200 shares of Class B stock, pledged by Crockwell as security for a loan of $5,000 from Bulova, after foreclosure by Bulova. Although Crockwell himself sold nothing to Sanford Cohen and received nothing from him, and Cohen assumed liability on the $5,000 loan in acquiring the shares from Bulova, the transaction was reported to the Commission as a transfer from Crockwell to Cohen for a

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total consideration of $100 paid to Crockwell. (R. 547–548, 559.)

4. The purchase by Lafount at public auction of 900 shares of Class A stock from Crockwell on March 8, 1939, for $2,450. No report of such transaction was made until April 15, 1940, over a year later (R. 548).

5. The transfer of 100 shares of Class A stock from Crockwell to one Lester Endlar on June 29, 1938. No report of the name of the transferor, the date of transfer, or the consideration paid for the transfer was ever filed with the Commission (R. 548).

6. The sale and delivery on September 24, 1940, of 100 shares of Class A stock from Endlar to Lafount for $3,100. This sale was not reported to the Commission until May 1, 1941, and in that report March 31, 1941, was given as the date of the transfer and $3,500 as the "amount received" by Endlar (R. 548–549).

In sum, the Commission found that during the six years following March 25, 1937, the respondent filed seventeen reports and applications knowingly misrepresenting under oath that Nordblom continued to be the owner of the 300 shares of stock sold to the Cohens on that date (R. 558; 409–438). On at least four occasions, Lafount filed with the Commission statements to the effect that no written or oral contracts existed concerning the voting rights of any stock or the ownership or control of the station, or rights and interests

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therein, despite the existence of an oral agreement between Lafount and Nordblom that the stock owned by the Cohens was to be reissued in Nordblom's name, and that he was to vote the stock as a shareholder and serve as a director as a courtesy and convenience to the Cohens (R. 558–559; 430, 431, 433–438). In six reports filed with the Commission since July 25, 1937, in purported compliance with Rule 43.1 and its predecessors, the applicant gave false information as to one or more of the following details: date of sale, date of acquisition, consideration, transferor, transferee (R. 559; *e. g.,* 399–400, 436–438, 355, 439–440). And two transfers which should have been reported under this Rule were never reported (R. 559; 402, 355, 230–231, 137–140).

On the basis of these and related subsidiary facts disclosed at the hearing, the Commission determined, in its final decision, that the respondent had wilfully and knowingly submitted false information to the Commission concerning the ownership of its stock and its financial status and had withheld other information which, under the Communications Act and the Commission's Rules and Regulations, it was under an obligation to report to the Commission. The Commission concluded, therefore, that the respondent could not be entrusted with the responsibilities of a station licensee and that a grant of its application for renewal of station license would not serve the public interest, convenience, or necessity. (R. 563–

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564.) Accordingly, an order was entered denying the application for renewal of license (R. 600–601).

On November 3, 1947, respondent took an appeal to the United States Court of Appeals for the District of Columbia Circuit from the Order of the Commission denying its application for renewal of license (R. 1). On November 24, 1948, a divided court reversed the order of the Commission (R. 608). Judge Clark delivered the opinion of the Court in which Judge Miller concurred (R. 608–619); Judge Edgerton dissented in a separate opinion (R. 620).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that there was no evidence in the record to support the Commission's findings and conclusion that respondent's misrepresentations and concealments were the result either of a wilful and knowing program of deception or gross and reckless disregard of its duties and responsibilities as a licensee.

2. In holding that respondent's explanations and its course of conduct were "amply" supported by the record.

3. In holding that the Commission could not infer that respondent's course of conduct was either wilful or reckless in the absence of direct evidence of wilfulness or a revealed motive for respondent's course of conduct.

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4. In considering respondent's program service and financial status in determining whether there was substantial evidence for the Commission's conclusion that respondent's misrepresentations and concealments demonstrated that it was not qualified to be a broadcast licensee.

5. In considering matter outside the record and in holding that the Commission had previously condoned some of the very transactions which it held in its decision demonstrated respondent's lack of qualifications to be a licensee.

6. In failing to dismiss the appeal.

SUMMARY OF ARGUMENT

A. In holding that there was no evidence in the record to support the Commission's conclusions that respondent's many admitted derelictions were the result of either a wilful and knowing program of deception or at least of gross indifference to, and disregard of its duties and responsibilities as a broadcast licensee, the court below has clearly misconstrued its powers as a reviewing court and substituted its judgment of the inferences to be drawn from the facts in the record for that of the Commission. The Commission found that in its reports and statements to the Commission, concerning at least six series of transactions involving the ownership of stock and financial status of the respondent corporation, respondent had made misstatements and misrepresentations or had concealed facts which it was under a duty to disclose

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to the Commission. The Commission also found that, with respect to these various transactions, respondent had either offered no explanation for its course of conduct or had offered explanations which were inconsistent with the facts in the record and patently unworthy of belief. The court below, however, in an opinion which discussed neither the findings and conclusions of the Commission nor made any detailed analysis of the evidence in the record, concluded that the "conceded mistakes" which respondent had made were never intentional or the result of a lack of good faith. Analysis of the record makes clear, however, that the court, while purporting to determine whether there was substantial evidence for the Commission's conclusion, has in fact substituted its own interpretation of the inferences to be drawn from the evidence. This, the court is without authority to do. Communications Act of 1934, Section 402 (e); *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 597; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73.

B. The court also erred in holding that the Commission, in the absence of direct evidence of deliberate or reckless conduct, or a revealed motive therefor, could not properly infer from the facts concerning the admitted misrepresentations and concealments of the respondent and its inability to offer any valid explanation for its course of conduct that the respondent's actions resulted either from deliberate deception or reckless in-

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difference. The court believed that the instant case was distinguishable from this Court's holding in *Federal Communications Commission* v. *WOKO,* 329 U. S. 223, because, in the *WOKO* case, there was direct evidence that the licensee intended to deceive the Commission and the motive for such deception, though unrelated to the licensee's relations with the Commission, was apparent. But there is nothing which prevents administrative agencies from drawing reasonable inferences of wilfulness or recklessness from substantial evidence which reasonably supports such inferences. *National Labor Relations Board* v. *Link-Belt Co.,* 311 U. S. 584, 597; *Hartsell Mills Co.* v. *National Labor Relations Board,* 111 F. 2d 291 (C. A. 4). And where such inferences can be drawn, the fact that the basic motive or purpose which determined the course of conduct may not also be clearly revealed by the evidence is irrelevant. It is clear, moreover, that a broadcast licensee who habitually makes false and misleading statements to the Commission is not qualified to continue as a licensee, and the Commission may so find even where the licensee's failure to comply with the Commission's Rules and Regulations results from his carelessness or inability to do so, rather than from any deliberate intent to deceive the Commission.

C. The court below also erred in considering respondent's program service and financial standing in determining whether there was substantial

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evidence to support the Commission's conclusion. This Court has clearly stated in *Federal Communications Commission* v. *WOKO,* 329 U. S. 223, that where a licensee has habitually made false statements and misrepresentations to the Commission, the Commission may lawfully conclude that a renewal of its station license would not be in the public interest, irrespective of whether or not the licensee is presenting an adequate or even superior program service or is financially capable of operating the station in the public interest. The court below also erred in going outside the record in holding that the Commission had condoned in 1942 an illegal transfer of control over the respondent corporation which it has condemned in the instant decision. For not only is there no evidence of any such condonement, but, as the decision of the Commission makes clear, the refusal to renew respondent's station license was not based upon any determination that an illegal transfer had taken place.

ARGUMENT

Introduction.—The Commission in this case has denied an application for renewal of license of Radio Station WORL on the grounds that the licensee, Broadcasting Service Organization, Inc., could not be entrusted with the responsibilities of a station licensee and that a grant of its application for renewal of its station license would therefore not serve the public interest, conven-

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ience, or necessity. This conclusion rested upon findings in turn based upon evidence in the hearing record showing that the respondent had willfully and knowingly submitted false information to the Commission concerning ownership of its stock and its financial status and that it withheld other information which, under the Communications Act and the Commission's Rules and Regulations, it was under an obligation to report to the Commission. However, in spite of the recent decision of this Court in *Federal Communications Commission* v. *WOKO,* 329 U. S. 223, which upheld the authority of the Commission to deny renewal of license to a licensee which had over a period of years made misrepresentations of fact to the Commission, the Court of Appeals for the District of Columbia Circuit reversed the Commission on Appeal and remanded the case to the Commission to carry out its judgment.

In reaching this conclusion, the court below did not challenge the findings of the Commission that over a period of six years and on numerous occasions respondent misrepresented facts in reports and statements required by, and made to, the Commission and, in addition, delayed the filing of other required statements for substantial periods of time. The court held, however, that the decision of this Court in the *WOKO* case, *supra,* must be narrowly restricted to its facts and is authority for the Commission to refuse renewal of license only where there has been a wilful and knowing

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misrepresentation or a series of misrepresentations to the Commission (R. 615–616). It went on to conclude, upon the basis of "an independent" search of the record, that the Commission's findings that respondent's activities in the present case involved wilful and knowing misrepresentations and a "planned program of deception" is not only not supported by substantial evidence but is supported by "no evidence at all" (R. 617); and that there was also no evidence in the record of any reckless disregard of the duties and responsibilities of a licensee or "gross carelessness and wilful disregard" by the respondent which, the Commission found, might have warranted denial of the respondent's renewal application even if the respondent's statements as to the reasons for its course of conduct could have been taken at face value. (R. 618). Two principal reasons are offered by the court below for support of these holdings and for distinguishing this Court's *WOKO* decision: First, that the respondent "convincingly argued" that it has at all times acted in good faith in dealing with the Commission and that the conceded mistakes which it had made with regard to the required reports to the Commission were never intentional or the result of a lack of good faith (R. 617); and second, that in this case there was no direct evidence of wilfulness and that no motive for concealment had been established (R. 616–617). We shall discuss these grounds of the decision in order.

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A. THE COURT BELOW ERRED IN FINDING THAT THERE WAS NO EVIDENCE IN THE RECORD TO SUPPORT THE COMMISSION'S FINDINGS AND CONCLUSION THAT RESPONDENT'S MANY ADMITTED DERELICTIONS WERE THE RESULT OF EITHER A WILFUL AND INTENTIONALLY PLANNED PROGRAM OF DECEPTION OR GROSS AND WILFUL DISREGARD OF ITS DUTIES AND RESPONSIBILITIES AS A LICENSEE WHICH COULD NOT BE EXPLAINED AS INADVERTENT ERRORS MADE BY THE RESPONDENT IN GOOD FAITH

In arriving at its determination that respondent lacked the requisite qualifications of a station licensee and that renewal of its license for Station WORL would therefore not serve the public interest, convenience or necessity, the Commission found as a fact that the "continued series of misrepresentations and concealments" (R. 562), amounting to a "planned program of deception * * * in order to convey such impressions as it deemed expedient" (R. 559) and were wilfully and knowingly made by the respondent (R. 557–563). It also found that the various explanations advanced by respondent to excuse its derelictions were inconsistent with the facts in the evidence and unworthy of belief (R. 549, 555–556, 560), and that even if respondent's explanations for its course of conduct could have been accepted as true, such explanations could not have served as an excuse for respondent's activities or justified its misrepresentations and concealments (R. 560–562). The majority of the court below, however, without either mention of the Commission's detailed findings, or analysis of the evidence in the record, arrived at an independent and contrary

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conclusion that there was "not only no *substantial* evidence to support [the Commission's] implied finding of wilful misrepresentation, but no evidence at all" [italics are the court's] and that the hearing record "amply" supports respondent's contention that "it has at all times acted in good faith in dealing with the Commission and that the conceded mistakes which it has made with regard to the required reports to the Commission were never intentional" (R. 617).

It is apparent, therefore, that the court below has substituted its judgment on the significance and import of the unchallenged facts in the record for that of the Commission. In so holding it has seriously misconstrued the proper relationship between an administrative agency assigned the task of weighing the evidence and determining the inferences to be drawn therefrom and a reviewing court which is responsible for insuring that substantial evidence exists for the agency's determination, but which is neither required, nor authorized, to make an independent redetermination of the proper conclusion to be drawn from the evidence. Section 402 (e) of the Communications Act which defines the scope of review by the Court of Appeals expressly provides that such court:

> shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that

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> the findings of the Commission are arbitrary or capricious.

In reaching its determination in this case, the court below has therefore ignored this Court's admonition in *Federal Communications Commission* v. *WOKO, Inc.*, that (329 U. S. 223, 229):

> The fact that [the court] might not have made the same determination on the same facts does not warrant a substitution of judicial for administrative discretion since Congress has confided the problem to the latter.

The *WOKO* decision announced no new or special rule of law with respect to the scope of judicial review of administrative action to be narrowly confined to the precise circumstances of that case. *National Labor Relations Board* v. *Nevada Copper Co.*, 316 U. S. 105, 106; *Donaldson* v. *Read Magazine*, 333 U. S. 178; *National Labor Relations Board* v. *Southern Bell Telephone and Telegraph Co.*, 319 U. S. 50, 60.[4] As this Court stated in *Republic Aviation Corporation* v. *National Labor Relations Board*, 324 U. S. 793, 800:

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[4] In fact the majority opinion below refers to that court's decision in *Yankee Network, Inc.*, v. *Federal Communications Commission*, 107 F. 2d 212, as authority for the proposition that it is "immaterial that the evidence before the Commission was susceptible of other conclusions than those drawn from it by the Commission and that, assuming the presence of substantial evidence, we should not substitute our judgment for that of the Commission." (R. 612.)

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> One of the purposes which lead to the creation of such [administrative] boards is to have decisions based upon evidential facts under the particular statute made by experienced officials with an adequate appreciation of the complexities of the subject which is entrusted to their administration.

And in *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 595–597, this Court observed in a case where "the court below was unable to find any evidence from which it could be inferred" that an independent union was company dominated as the Board had found:

> But we are of the opinion that the Court of Appeals in reaching that conclusion substituted its judgment on disputed facts for the Board's judgment—a power which it has been denied by the Congress. * * * Congress entrusted the Board, not the Courts, with the power to draw inferences from the facts.

Examination of the record in this case shows clearly that substantial evidence exists for the Commission's conclusion that the respondent either wilfully and knowingly misrepresented the facts concerning its stock ownership and financial status or operated its station with complete indifference to, and disregard for, the duties and responsibilities imposed upon it as a broadcast licensee.

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1. The Transfer of 700 shares of Class B Stock on March 25, 1937, and 100 Shares of Class B Stock on September 24, 1940, and the Failure to Report the Transfer of 400 of These Shares Until November 1943

The Commission found that 300 shares of Class B voting stock of the respondent corporation were purchased on March 25, 1937, from Robert C. Nordblom for the brothers Sanford and George Cohen, and that an additional 100 shares of Class B stock were purchased from Nordblom for George Cohen on September 24, 1940 (R. 557). In both instances, Nordblom received the agreed contract price, endorsed the stock certificates, made out in his name, in blank, and turned them over to the Cohens (R. 544, 549). The Commission found, however, that no report of these transactions was made to the Commission until November, 1943, and that, on the contrary, the respondent repeatedly stated, during this period, that Nordblom was the unencumbered owner of the stock, that no other person had beneficial interest in the stock and that no contracts or understanding existed which in any way affected the voting or ownership of the stock (R. 551, 557–9). The reports, when they were made, gave erroneous figures with respect to both the dates of the transactions and the purchase price of the shares (R. 551, 558–559). The Commission also found that explanations advanced for its failure to report the shares were consistently unsupported by the facts

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and unworthy of belief and that even if these explanations could have been accepted at face value that they would not have excused respondent's failure to report the transactions (R. 550, 556, 560–562).

a. *The Transfer of March 25, 1937.*—At the beginning of 1937, the respondent corporation was owned and operated by a group of four men, George A. Crockwell, James K. Phelan, William H. Eynon, and Robert C. Nordblom. Stock in the licensee corporation consisted of 1,000 shares of no par Class B voting stock and 1,000 shares of Class A preferred stock. Crockwell owned 200 shares of Class B and 400 shares of Class A. Phelan and Eynon each owned 150 shares of Class B and 300 of Class A, and Nordblom 500 shares of Class B (R. 357–358, 391).

The station was heavily in debt and making no profit (R. 41). In the early part of March 1937, Crockwell entered into negotiations with Harold Lafount for the sale of an interest in the corporation. Mr. Lafount had been a member of the Federal Radio Commission from 1927 to 1934, and was at that time in charge of all radio interests for Arde Bulova, including a controlling interest in radio station WCOP in Boston. (R. 22–23, 51–53.)

On March 16, 1937, Lafount entered into an agreement with Crockwell and Nordblom. For a consideration of $48,000, he agreed to purchase 300 shares of Class B stock from Crockwell and 100 from Nordblom. (R. 384–385.) On the same

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date, Crockwell and Nordblom entered into a separate contract with Eynon and Phelan, in which it was stated that Crockwell and Nordblom were about to enter into an agreement with Lafount for the sale of 700 shares of Class B stock for $52,500, and that in consideration of a payment of $2,500 each to Eynon and Phelan out of the $52,500 secured from the transaction with Lafount, Eynon and Phelan were to transfer to Crockwell all of their Class A and B stock in the corporation. The contract also provided that upon receipt of the $52,500, the debts of the licensee would be paid and, after Eynon and Phelan each received $2,500, any money remaining would be divided between Crockwell and Nordblom in the ratio of 62½% to Crockwell and 37½% to Nordblom. (R. 382–383.) This contract, by its terms, was to expire on March 23, 1937, if the sale of stock had not been consummated by that time, but when the sale subsequently took place on March 25, 1937, the terms and provisions of the two contracts of March 16, 1937, were put into effect (R. 75, 95–97, 382–3).

On March 25, 1937, Nordblom, Crockwell, Phelan, Eynon, Lafount, and Ben S. Fisher, attorney for the Cohens and Lafount, met in the offices of Robert H. Davison, then attorney for Nordblom, to close the deal in accordance with these previous agreements. A temporary certificate for 400 shares of Class B stock was made out to Lafount representing 150 shares each from

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Eynon and Phelan and 100 from Nordblom (R. 357, 24–26). Fisher, acting as agent for the Cohens, at Lafount's request, entered into a contract with Nordblom whereby "Ben S. Fisher, as agent" bought 300 shares of Class B stock from Nordblom for $4,500 (R. 396). The temporary certificate for these 300 shares was made out in Nordblom's name indorsed in blank by him and turned over to Lafount (R. 30, 97, 105–106). Lafount in turn gave Davison a cashier's check for $52,500, the sum mentioned in the March 16 contract between Eynon, Phelan, Crockwell, and Nordblom, and representing the $48,000 agreed upon in the contract with Crockwell and Nordblom of March 16, 1937, plus the $4,500 agreed upon in the contract between Nordblom and Fisher (R. 27, 382–385). Although there were two separate contracts for the purchases of the 400 and 300 shares respectively, Lafount did all the negotiating for the Cohens and paid for the entire 700 shares with the one check for $52,500 (R. 82–83). And while the contracts for the "two separate transactions" called for a payment of $48,000 by Lafount and only $4,500 by the Cohens, it was agreed that the costs of these purchases, and other purchases which might be made later, were to be prorated equally among Lafount and the Cohens in accordance with the number of shares owned by each (R. 27, 228). Lafount became President, Fisher a director, and Helen Rose, Sanford Cohen's secretary, was made Treasurer (R. 96).

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and that Eynow and Phelan had relinquished 150 shares of Class B stock

On March 31, 1937, respondent filed with the Commission a report made out by Davison, clerk of the licensee, on March 27, 1937, showing that on March 25, 1937, Nordblom had relinquished 100 shares of Class B stock each, and that Lafount had purchased 400 shares of Class B stock and that the "amount actually paid for the stock" by Lafount was $30,000 (R. 399–400). No mention was made of the sale of an additional 300 shares of Class B stock by Nordblom. Instead, Fisher, in submitting the report to the Commission, attached a covering letter stating "these reports show a change in ownership of a minority of the stock of the corporation. * * *" (R. 446).

On April 23, 1937, the temporary certificates were replaced by new permanent certificates. Again a certificate for 300 shares was made out in the name of Nordblom, indorsed in blank by him, and sent by Davison to Lafount who turned it over to Sanford Cohen (R. 357, 397–398). Cohen held this certificate in his possession until November 27, 1943, when, after a Select Committee of the House of Representatives had conducted an inquiry into the affairs of Station WORL (R. 562; 165, 273–278), he turned it in to the corporation and had two new certificates made out in its place, one for 200 shares in the name of Sanford Cohen, the other for 100 shares in the name of his brother, George Cohen (R. 358). A report was filed with the Commission on December 2, 1943.

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This report stated that on November 27, 1943, Nordblom had transferred 200 shares to Sanford Cohen for a total consideration of $3,334, and 100 shares to George Cohen for $1,666 (R. 440). This was the first time that any report, application or other document filed with the Commission by respondent indicated any facts other than that Nordblom was the full and unencumbered owner of the 300 shares. During this period, respondent filed at least 17 reports and applications knowingly misrepresenting, under oath, that Nordblom continued to be the owner of the 300 shares of stock sold to the Cohens on that date (R. 558, 409–438). Moreover, during the major part of this period of over six years, the Rules and Regulations of the Commission required all licensees to make full disclosure to the Commission of the names of the beneficial owners of any stock in the licensee corporation and to make full disclosure of all special arrangements, agreements or contracts written or oral affecting the control of the licensee in any manner.[5] Not only did respondent not indicate that there was any encumbrance whatsoever upon Nordblom's ownership of the stock but, on at least four occasions on April 29, 1937 (R. 430), June 18, 1937 (R. 431), July 11, 1938 (R. 433–435), and October 26, 1938 (R. 436–438), Lafount filed with the

[5] These various Rules and Regulations are set forth in Appendix A, *infra*, pp. 82–87.

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Commission statements for the respondent to the effect that no written or oral contract existed concerning the voting rights of any stock or the ownership or control of the station or rights or interest therein, despite the existence of the agreement between Lafount and Nordblom that the stock sold to the Cohens was to be reissued in Nordblom's name, endorsed in blank, and delivered to the Cohens, and that Nordblom would continue to vote the stock and to serve as a director as a courtesy to the Cohens.

b. *The Transfer of September 24, 1940.*—On September 24, 1940, Nordblom sold, transferred and delivered 100 additional shares of Class B stock, endorsed in blank, to Lafount for $1,500 (R. 549, 140–141). This certificate was turned over to George Cohen, who repaid Lafount the $1,500 (R. 144–145). These shares were also not transferred on the books of the company and no report concerning the entire transaction was made to the Commission until November 1943. On November 9, 1943, George Cohen surrendered the shares for transfer on the corporation's books and a new certificate was issued to him (R. 356). On November 17, 1943, respondent reported that, on November 9, 1943, Nordblom had transferred the 100 shares to George Cohen for $1,500 (R. 392, 439). Until this time, all reports to the Commission filed by respondent listed Nordblom as the sole and unqualified owner of the 100 shares

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(R. 426–429). Sometime after the sale of the 100 shares in September 1940, Nordblom, who had been led to believe that his shares were necessary to permit a sale of the station by Lafount and the Cohens, discovered that no such sale was contemplated and expressed his dissatisfaction with the deal (R. 336, 403). This led to a series of negotiations between Nordblom and Lafount culminating in the payment to Nordblom of an additional $750 by Lafount on November 24, 1943, fifteen days after George Cohen had taken the stock in his own name, and a week after the transaction had been reported to the Commission for the first time (R. 403–408). No report of the payment of the $750 to Nordblom was ever made to the Commission.

c. *Respondent's explanation for its failure to report the transactions.*—Respondent's explanation for its failure to report any transaction to the Commission concerning the 400 shares of Class B stock transferred from Nordblom to the two Cohens until November 1943 is based on a contention that the stock was not, in fact, transferred from Nordblom to the two Cohens until the two reported dates in November 1943, and that prior to such dates no sale of the stock had occurred which, under the Commission's Rules and Regulations, should have been reported. The argument runs that in spite of the transactions of March 25, 1937, and September 24, 1940, by which

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Nordblom received the full contract price for his shares and in return endorsed the stock certificates for the shares in blank and delivered them, through Lafount, to the Cohens, no completed transfers occurred, or at least that Lafount and the Cohens honestly believed that no transfer had occurred, and, under the applicable state law, were entitled so to believe (R. 554–556).

Respondent's story is that, at the time of the March 25, 1937, transaction, neither Lafount nor Fisher knew how the Cohens wished the 300 shares allocated between themselves, and so, as a convenience, the temporary certificate was made out in Nordblom's name, endorsed in blank by him and delivered to the Cohens; that the March 31, 1937, report of the transaction, prepared in Boston by Davison on March 27, 1937, failed to mention the sale of the 300 shares because of this uncertainty as to the eventual disposition of their shares; but that before the Cohens could determine their relative holdings and new certificates be made out in their name, Crockwell started to complain about the transaction to Lafount, stating that he and Nordblom were dissatisfied, and that he wanted to rescind, get the station back, or work out some other settlement. Respondent further states that when the Cohens were informed of these complaints by Lafount, they refused to proceed further with the transaction and to have the certificates for the 300 shares transferred on the

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licensee's books until all claims against the stock had been cleared up.

It is alleged further that in 1939, before these claims had been settled, the licensee, and Lafount and the Cohens, were informed of still other claims against the corporation—in the form of a claim by Miss Natalie Whitwell that the entire assets of Broadcasting Service Organization rightfully belonged to her—and that these further claims confirmed the Cohens in their determination not to have the certificates placed in their name. Finally, it is alleged that almost immediately after the September 1940 purchase of Nordblom's additional 100 shares, Nordblom himself expressed dissatisfaction with the terms of that transaction, and George Cohen, for whom the shares had been purchased by Lafount, consequently refused to have the certificate for these shares transferred to him on the respondent's books until this matter could be settled with Nordblom.

Respondent, therefore, claims that the Cohens, acting with Lafount's knowledge, were justified in refusing to accept the stock for transfer on the corporate books until the various claims were settled, that as soon as the claims were disposed of in November 1943, the transfer was made and reported to the Commission, that until such time no completed transfer had taken place, and the respondent was legally justified in believing, and in so reporting to the Commission, that Nordblom,

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rather than the Cohens, was the owner of the shares, or, at least, that if Lafount and the Cohens were mistaken in this belief, they were honestly mistaken, and acted at all times in "good faith".

It is this explanation of its activities that the court below stated was "amply" supported by the record (R. 617). But examination of the evidence in the record, which was not even discussed by the Court of Appeals in reaching its decision, makes clear that substantial evidence exists for the Commission's findings that the alleged complaints concerning the stock were not and could not have been the true reasons which induced the Cohens to refuse to allow the certificates to be placed in their names on the books of the respondent, or caused the failure to report the transfers or any information concerning the altered status of the stock to the Commission. Moreover, as the Commission pointed out in its decision (R. 560–562), even if the alleged complaints had been the true cause of the Cohens' refusal to place the certificates in their own names on the books of the corporation, that fact would not have made the Cohens any less the legal owners of the stock or excused their failure so to report to the Commission.

Since the earliest mention of any claim by Miss Whitwell known to either Lafount or the Cohens is 1939, respondent's entire case for withholding information until 1943 concerning the sale on March 25, 1937, of the 300 shares of stock from

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Nordblom to Fisher as agent for the Cohens, rests on the alleged dissatisfaction of Nordblom with the 1937 deal. But Nordblom denied categorically that he was dissatisfied with his sale to the Cohens or that he ever expressed any such dissatisfaction to Crockwell or Lafount (R. 327–328), and he admittedly had no direct dealings at all with either of the two Cohens (R. 329). And Lafount admitted that Nordblom never made any direct claims upon him or the respondent company concerning the 1937 transaction (R. 157). Consequently, respondent has been forced to fall back on the claim that Crockwell complained to Lafount that Nordblom was dissatisfied with the sale agreement, and that when Lafount told Sanford Cohen what Crockwell had allegedly told him, Cohen stated that in that case they (the Cohens) would not go through with the transfer and put the certificates in their names until Mr. Nordblom settled his difficulties (R. 117, 228).*

* There is considerable conflict in Lafount's testimony as to just when Crockwell first complained of the sale. On direct examination (R. 30) and also at the start of cross-examination (R. 102), Lafount indicated that Crockwell's first complaints came a month or so after the March 25, 1937, closing, but before the permanent certificates could be transferred to the Cohens. However, after it was established that issuance of the permanent certificates for the 300 shares in Nordblom's name on April 23, 1937, was in accordance with the understanding of the parties in March (R. 102–103), Lafount then stated that the Crockwell complaints started on March 26, 1937, the day following the transfer (R. 103).

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But the record does not even support the claim that Crockwell told Lafount that Nordblom was dissatisfied with his sale of the 300 shares to the Cohens and was contemplating any action as a result. Lafount testified often enough that Crockwell informed him that he, Crockwell, was dissatisfied, but Crockwell admittedly sold nothing directly or indirectly to the Cohens in the original 1937 transaction (R. 337–338). Lafount also testified that Crockwell told him that Nordblom was "dissatisfied" (R. 30–31, 102–103, 109–110, 115–117, 154–159), although the exact nature of this dissatisfaction is never made clear and Lafount admitted there were "no definite claims" (R. 155).

It is clear, however, from a review of Lafount's own testimony, that if Nordblom was dissatisfied at all with the 1937 transaction it was in relation to his arrangements with Crockwell for the division of the residue of the $52,500 payment for the 700 shares of stock sold to Lafount and the Cohens on March 25, 1937,[7] and not with Lafount

[7] It must be remembered that Nordblom was party to a separate agreement with Crockwell, as well as Eynon and Phelan, preliminary to the transactions with Lafount and Fisher, under which Crockwell and Nordblom were to pay Eynon and Phelan $2,500 each for their stock out of the $52,500 to be received from Lafount, and that after payment of the outstanding debts of the licensee, Crockwell and Nordblom were to divide the remaining sum of money between themselves in a ratio of 62.5% to Crockwell and 37.5% to Nordblom (R. 382–383). Since this meant that Crockwell who gave up no

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or the Cohens (R. 109–110, 117–118, 156–158, 170–171). In every case in which Lafount was asked to specify the nature of Nordblom's alleged claims, it appeared that Nordblom was "very much dissatisfied, and that he had some adjustments to make with Mr. Crockwell" (R. 110), that Sanford Cohen told Lafount to "let it stand until Mr. Nordblom and Mr. Crockwell thrash out *their problems*" (R. 117), that Nordblom told Lafount he was not satisfied and "even threatened to s[illegible] Mr. Crockwell" (R. 118), that Lafount asked Nordblom "if he had yet adjusted his troubles with Mr. Crockwell, and if he was satisfied to which he said No" (R. 156), that there "was an agreement or an understanding or a misunderstanding between those two men [Crockwell and Nordblom]", and Nordblom never asked Lafount for any specific amount of money or made any claim concerning the stock (R. 157–158), and that Lafount's troubles "were with Mr. Crockwell, who was not getting along with Mr. Nordblom. It was not Nordblom and I, but *Mr. Crockwell and Mr. Nordblom*" (R. 171). (Emphasis supplied in all above quotations.) Lafount was thus unable to explain why any dissatisfaction by Nordblom concerning his deal with

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stock in the deal, but, on the contrary, received 600 shares of Class A stock from Eynon and Phelan (R. 399) was to get almost twice as much money as Nordblom, who was to dispose of 400 shares of Class B stock, any dissatisfaction on the part of Nordblom as to his arrangements with Crockwell is not difficult to understand.

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Crockwell should have had anything to do with the nonreporting of the 300 shares purchased from Nordblom in 1937. He testified as follows (R. 157–158):

> Q. Why did you regard the 300 shares of "B" stock as affected by these troubles between Nordblom and Crockwell?
>
> A. Because that was the only stock that had not been reported to the Commission and actually transferred, physically transferred.
>
> Q. But that report to the Commission had no bearing upon the rights of any particular party to that stock?
>
> A. Not any; not any.
>
> Q. Well, why does the report to the Commission enter into it at all?
>
> A. You asked me why the other stock was not included. The other stock which I purchased was mostly Eynon and Phelan, or whatever their names were.
>
> Q. No; I asked you why the 300 shares, represented by certificate B–3, was regarded as in any way involved in the claims or dealings between Nordblom and Crockwell.
>
> A. That I cannot tell you.

The difficulties in respondent's story seem to arise in large part from the fact that though Nordblom was alleged to be dissatisfied, and to have continued to be so until November 1943, the Cohens admittedly made no efforts, themselves, to

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settle the dispute or even to discover what Nordblom's exact claims were, if any (R. 251, 280). And Lafount, to whom the Cohens allegedly left all their negotiations, although he was no lawyer and did not understand why the Cohens were unwilling to proceed (R. 34, 103), never discussed the matter directly with Nordblom (R. 117, 155), although he saw him from time to time at directors' meetings and on other station business and did discuss with Nordblom the latter's difficulties with Crockwell (R. 156–157). All Lafount's negotiations concerning the complaint were with Crockwell (R. 155), in spite of the fact that Crockwell never made any definite claim on behalf of Nordblom (R. 155). In this respect there is a further inconsistency in respondent's story in that Lafount states that Crockwell, with whom he was "negotiating," continued his complaints for "a year and a half or two years" (R. 31), whereas respondent's claim is that the matter was not finally disposed of until Nordblom was paid an additional $750 in November 1943.

Moreover, in order to accept respondent's story, one must find that, though Nordblom's complaints and dissatisfaction with the 1937 sale to the Cohens continued unsettled until November 1943, George Cohen, who was unwilling to take title to stock he had bought from Nordblom in 1937 due to Nordblom's alleged claims against the stock, was willing to purchase an additional 100 shares from Nordblom in 1940, and the lat-

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ter was willing to sell to a party against which he allegedly had an unresolved claim arising out of their last transaction together. And, similarly, Sanford Cohen actually purchased 200 shares from Crockwell in 1938, while both Crockwell and Nordblom were still allegedly claiming they had been taken advantage of in the sale of the previous year.

Respondent's entire argument concerning Nordblom's alleged dissatisfaction with the 1937 transaction, depends upon its claim that the 1943 settlement by which Nordblom received an additional $750 concerned both his 1937 sales of 300 shares and his sale of an additional 100 shares to George Cohen in September 1940. The testimony relating to the negotiations and correspondence between Nordblom, Lafount, and Davison concerning the $750 settlement with Nordblom in 1943 makes it clear, however, that this settlement related solely to the sale of the 100 shares on September 24, 1940, and did not concern the earlier sale (R. 158–171). And in view of the fact that Nordblom never made any complaint about the 1937 transaction (R. 337), and Lafount stated that he never negotiated with Nordblom about the 1937 transaction (R. 155), it is not clear how respondent could expect the Commission or anyone else to believe that the $750 related in any way to the 1937 transaction.

The basis for respondent's argument that the 1943 payment of $750 was, at least in part, in

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settlement of Nordblom's outstanding claims arising out of the 1937 sale is a letter of release signed by Nordblom on November 27, 1943, the date that the 300 shares were finally transferred on respondent's books to the Cohens (R. 350). This letter addressed to Lafount acknowledges receipt of $750 in release of "all claims and demands I may have against you not only on account of the purchase of 100 shares of Class B stock of Broadcasting Service Organization, Inc., but from all other claims arising out of your purchase from me of both Class A and Class B common shares." Standing alone, this "release" might have some circumstantial evidentiary value for respondent's proposition that the $750 payment was, in fact, to settle Nordblom's 1937 claim as well as his admitted claims arising out of the sale of the additional 100 shares of Class B stock in 1940, in spite of the fact that no express reference is made to the 1937 sale as to the 1940 transaction, and in spite of the peculiar reference to "Class A" shares purchased by Lafount from Nordblom when, as a matter of fact, the record discloses that Nordblom not only never sold any Class A shares to Lafount (or to the Cohens through Lafount) but had at no time ever owned *any* Class A shares (R. 330). But the November 27, 1943, release does not stand alone. Instead, a series of letters between Nordblom, Lafount and Davison, who, according to Lafount, acted for both parties in the matter (R. 166), between May

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1, 1943, and November 24, 1943, makes clear that the $750 payment was, in fact, solely related to the 1940 sale of the 100 shares (R. 403–408). Lafount at first tried to imply that this exchange also involved both the 1937 and 1940 transactions (R. 163), but when it was pointed out that Lafount's letter of May 11, 1943, expressed surprise at learning of any Nordblom dissatisfaction (R. 404), Lafount quickly changed his mind and admitted that this correspondence related only to the September 24, 1940, sale. (R. 164, see also R. 160, 170–171.) On November 24, 1943, Davison sent Nordblom Lafount's check for $750 "in full payment for 100 shares of the Class B Stock" (R. 406) and Nordblom acknowledged receipt "of $750 with the $1,500 previously paid me in full payment for 100 shares of the Class B stock" (R. 407). Under the circumstances, it is clear that the November 27, 1943, release was merely a general release signed by Nordblom at respondent's request when respondent had determined, after the commencement of the inquiry into its affairs by the Select Committee of the House of Representatives (R. 165), to transfer the certificates and report the transfer, and the Commission so found in its decision (R. 556).

The facts concerning the Whitwell claims are equally conclusive against respondent's explanation. Here there is no question about the existence of the claims or that Lafount and the Cohens were made aware of their existence, at least after

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May 29, 1939 (R. 359–361). This claim finally resulted in a suit at law brought by Miss Whitwell in January 1942, which was a suit for money (between $3,000 and $4,000), and not against any specific stock interest, and which was won by the corporation (R. 31, 177–178, 261–2). Hines, attorney for Miss Whitwell, continued to complain and request a settlement. And these claims were still being asserted by Mr. Hines in testimony before a Congressional Committee as late as December 15, 1943 (R. 254, 262). They were thus no more "settled" in November 1943, than they had been at the conclusion of the suit against the corporation in 1942.

Respondent's explanation for its failure to report the sale and transfer of the 100 shares purchased by Lafount for George Cohen in September 1940 is, in the light of the record, even more unpersuasive. Here it is alleged that once again after the sale, Nordblom became dissatisfied and that, consequently, George Cohen refused to complete the transfer until Nordblom's claim could be finally settled. In this case, as indicated above, the record discloses that Nordblom did, in fact, register a complaint—he had been told the stock was necessary in order to put through a sale of the station to new parties but no such sale took place. But Nordblom's letter to Lafount (with whom he had dealt) expressing his surprise and dissatisfaction was not written until May 1, 1943, nearly three years after the sale (R. 403), and

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Lafount's letter of May 11, 1943, in reply, shows clearly that he had not heard of the complaint previously (R. 404–405). Clearly, therefore Nordblom's dissatisfaction could not have been the cause of respondent's previous failure to report the transfer or any facts concerning the deal. Moreover, the $750 payment (which was never reported to the Commission), to Nordblom in settlement of his later claims was made and acknowledged on November 24, 1943 (R. 406–408), while on November 9, 1943, fifteen days before the settlement of Nordblom's claim and just when negotiations were presumably at their height, George Cohen surrendered the certificate endorsed in blank by Nordblom in 1940, and a new certificate was made out in his own name on November 15, 1943. (R. 356, 358, 439.) Whatever the reason might have been for the surrender of the stock on November 9, 1943, it was clearly not because Nordblom's claim against it had been settled. In the court below, respondent argued that George Cohen might have been notified concerning the settlement by phone on November 9, 1943, and have initiated the final transfer upon receipt of such preliminary information. It is evident, however, that no such precipitate action was taken by the Cohens with respect to the other 300 shares which also were allegedly involved in the $750 settlement.

d. *The insufficiency of respondent's legal argument that no transfers of the unreported shares*

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had occurred.—It is clear from the above that respondent's explanations of the reasons why it failed to place the 400 shares of stock in the name of the Cohens on the corporation books are inconsistent with and contrary to the record evidence and cannot be accepted by the Commission. However, as the Commission pointed out in its decision (R. 560–562), even if it had been possible, as it was not, to accept respondent's story of the reasons for its various actions, these facts would not justify respondent's failure to make any reports concerning the transactions to the Commission.

Respondent has argued that since the shares remained in Nordblom's name, and he continued to serve as a director and, allegedly, voted the stock at shareholders' meetings, Lafount and the Cohens were legally entitled to believe, or at least honestly did believe, that no completed transaction had taken place which they were required to report to the Commission. On the contrary, it is alleged that if respondent had transferred the stock to the Cohens on the books of the respondent corporation it would have acted as a ratification of the sales and the Cohens would not have been able to rescind if the alleged claims against the stock by Nordblom or Miss Whitwell achieved some degree of validity. And respondent in his argument below made reference to a large number of state decisions purporting to demonstrate that execution of a contract depends upon the intent

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of the parties; that the corporation under Massachusetts law was entitled to consider Nordblom as the owner of the stock, and that "mere physical possession of the stock certificates" did not establish the Cohens ownership since Nordblom, the holder of record, continued to exercise "all the prerogatives of ownership."

But each of these "legal arguments" are either irrelevant or completely unpersuasive. Thus the claim that the Cohens could not have allowed new certificates to be issued in their name, unless by such action they "ratify" the transaction and lose their right to rescind, is in the light of the facts in the case little short of ridiculous. In the first place, the allegation in issue is that Nordblom, not the Cohens, was dissatisfied with the March 25, 1937, sale; whatever Nordblom's right to rescind the contract for fraud or any other reason, the Cohens had no right and couldn't have rescinded even had they wished to. More important, it is axiomatic that even where a party to a contract has rights to rescind, such rights must be exercised immediately upon discovery of the facts giving the party the right to rescind, or not at all. Whatever may have been the Cohens' right to rescind the contract of sale when they first heard of Nordblom's "dissatisfaction," the fact is that they did not make any effort to rescind. The certificates were not tendered back to Nordblom but kept by the Cohens. No effort was made to have Nordblom return the $4,500

paid for the 300 shares. Instead, the Cohens kept the certificate indorsed in blank in their vault for over six years.[8] It is obvious that this inactivity on the part of the Cohens constituted a far more effective "ratification" than would have been the case if the certificates had been trans-

[8] It was alleged by respondent in the court below that Nordblom's actual ownership is shown by the fact that he continued to vote the stock until November 1943, and also because no dividends were paid to the Cohens during the six-year period. It is true that Nordblom continued to vote the stock during this period, although his actual influence as a director and stockholder is shown by the fact that he had forgotten he voted at all until the minutes of the annual meetings were called to his attention (R. 334–335). It is also the case, however, that he continued to appear as a stockholder and director at Lafount's request (R. 32, 341–342), and that Nordblom who did not consider himself the owner of the shares (R. 329, 342), remained on as a "convenience to the buyers" (R. 328), largely because the station was a tenant of his hotel and acting as a director gave him "an opportunity to watch the progress of it, and so forth" (R. 342). And since there was no binding agreement allowing Nordblom to vote the stock in his independent discretion, it is clear that the Cohens could at any time have taken over the voting for themselves or have instructed Nordblom how to vote and did not do so merely because no issue arose requiring them to exercise their power. With respect to the nonpayment of dividends, since no dividends at all were paid by the corporation during the period (R. 263), in spite of its increasing prosperity (R. 353), it can be as reasonably argued that the lack of dividend payments demonstrates that the Cohens were the true owners rather than Nordblom, and that rather than risk exposure of this fact by a dividend payment to the Cohens or pay out money to Nordblom to which, as a purely nominal stockholder, he was not entitled, no dividends at all were declared.

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ferred. It is equally obvious that even if their earlier actions had not resulted in passing title to the stock to the Cohens, their continued inactivity would, after a reasonable period of time, have resulted in the consummation of any uncompleted transfer.

Moreover, while the intent of the parties to any transaction is obviously material to a determination as to whether a transfer of property which is the subject of the contract has been consummated and if so, when the transfer took place, this "intent" is obviously the mutual intent of the parties to the transaction and not merely the mental reservations of one of the parties not communicated to the other, or otherwise made the basis for any action. If the events occurring in March and April legally resulted in the passing of title to the stock to the Cohens, their desire or intent not to have title or their belief that they did not have title would of itself, in the absence of express agreement with the vendor, have no legal effect. If, on the other hand, the events were insufficient to result in passage of title, the desire, intent or belief of the Cohens would be ineffective to make them the owners of the stock rather than Nordblom. Similarly, the possible fact that under Massachusetts law a corporation is entitled to consider the stockholder of record as the true owner of the stock for the distribution of dividends, voting, etc., does not excuse the respondent, whose principal officers and directors were

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completely aware of the true facts in the case, from reporting them to the Commission merely because the Cohens, for personal reasons, chose to hold the indorsed certificates rather than turn them in for new certificates in their own names.

And finally there is no merit in respondent's contention that since the "mere" transfer of a certificate of stock indorsed in blank allegedly does not pass title to the stock, Nordblom remained its owner. Since respondent is a Massachusetts corporation, it might be sufficient to point out that Section 27 of Chapter 155 of the Massachusetts General Laws expressly provides that title to a certificate and to the shares represented thereby shall be transferred [Mass. Gen. L. Sec. 27 (a), Ch. 155, p. 1946 (1932)]:

> By delivery of the certificate endorsed *either in* blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby * * *

But it should also be added that, in the present case, there had been much more than a mere physical transfer of stock indorsed in blank. Both in the 1937 sale of the 300 shares and the subsequent sale of the additional 100 shares in 1940, there had been a valid sales agreement, the buyer had turned over the full purchase price to the seller, and had received, in return, the certificate for the stock indorsed in blank and admittedly available for immediate surrender and issuance of a new certificate made out in the buyer's

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name at the buyer's will. No case was cited by respondent below or could properly be cited holding that under such circumstances any presumption of continued ownership by the original seller could exist or be maintained.

But the conclusive answer to respondent's legal arguments is that given by the Commission, itself, in its decision (R. 560–562). For even if it be assumed that the respondent, which as Lafount ruefully admitted, was surfeited with lawyers, actually though mistakenly believed that full title to the stock remained with Nordblom and that the transfer was not complete, there still was no excuse for failing to inform the Commission concerning the facts of the transaction in view of the fact that the Commission's Rules and Regulations, in order to cover just such cases as the present one, expressly required licensees to file information concerning the beneficial ownership of stock where such owner differs from the record owner (R. 434), and of any contracts or understandings affecting the control or operation of the station (R. 430, 431) or the ownership or control of rights and interests therein (R. 435, 437, See Appendix A, *infra*, p. 83). As the Commission pointed out (R. 561, 562), the Cohens' purpose in the concealments may have been, as they suggested, to insulate themselves from possible legal action by Nordblom or Miss Whitwell, but "a licensee cannot excuse misstatement to the Commission on the ground that it was intended

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to deceive a third party rather than the Commission itself." (R. 562.) Thus in *Federal Communications Commission* v. *WOKO, Inc.*, 329 U. S. 223, the concealment of Pickard's interest in the station was in order to prevent such interest from becoming known to his fellow officials at the Columbia Broadcasting System rather than because of any necessity of keeping his interest in the station a secret from the Commission. This Court, however, properly stated that the fact that the misrepresentation was directed at a third person did not sanctify the licensee's activity since (329 U. S. at 227):

> The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones.

e. *Failure to report the full consideration paid for the stock.*—Respondent not only failed to make any timely reports concerning the transfers of the 400 shares of Class B stock sold by Nordblom to the Cohens until November 1943, but also gave false information in the reports which were ultimately made. Thus, the reports which were made gave false and misleading information concerning the total consideration paid by the Cohens and Lafount for the 800 shares of Class B stock involved in the transactions of March 25, 1937, and September 24, 1940, respectively. The

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actual total cost of the 800 shares was $54,750;[9] the total amount reported as paid in the three reports of March 31, 1937, November 15, 1943, and December 2, 1943 (R. 399, 439–440), was only $36,500, a discrepancy of almost $20,000.

Respondent has attempted to explain this discrepancy by arguing that the reported considerations make allowances for the prorating of the purchase price of all the stock, both Class A and B between Lafount and the Cohens. But the record demonstrates that Lafount's purchases of 1,000 shares of Class A stock in two transactions on March 15, 1939, and September 24, 1940, actually cost him a total of $5,550 (R. 38–39, 99–100), and his reports on these purchases on April 15, 1940, and May 1, 1949, respectively showed a total payment of $5,950, only $400 more than was actually paid. (R. 355.)[10] And the total cost to Lafount and the Cohens of all 1,000 shares of both Class A and B stock combined was, according to the record, $65,400, while the actual amount reported for all purchases was only $42,550.[11] While approximately $5,000 of this dis-

[9] $48,000 for the 400 shares purchased by Lafount on March 25, 1937; $4,500 for the 300 shares purchased by Fisher for the Cohens, both paid by Lafount by the cashier's check for $52,500 (R. 82–83), $1,500 for the 100 shares bought by Lafount for George Cohen on September 24, 1940 (R. 36), and $750 additional paid Nordblom on November 24, 1943 (R. 406–407).

[10] This reported payment of $400 more than the actual cost is discussed *infra* at page 64.

[11] See Appendix B, *infra*, pp. 88–89.

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crepancy results from the improper reporting of the purchase of the remaining 200 shares of Class B stock by Sanford Cohen in 1938 (discussed *infra* at page 53), the remainder is directly the result of the false and misleading figures with respect to consideration given in the three reports filed on March 31, 1937, November 15, 1943, and December 2, 1943, covering the transactions discussed in this section.

Thus, the 400 shares purchased by Lafount were reported as costing $30,000 rather than the $48,000 contract price, allegedly because it was claimed that the Cohens had agreed to equalize the purchase cost of the two purchases and $30,000 represents four-sevenths of the total purchase price of $52,500 (R. 150–151). That would have meant that the Cohen's purchase of the other 300 shares should have been listed as costing $22,500. In fact, however, the consideration listed in the December 2, 1943, report as paid for these 300 shares was only $5,000. It was claimed that this reduction was the result of the cheap purchases of the 100 shares of Class A stock by Lafount (R. 214–216). But since those sales had been reported to the Commission at approximately the price for which they were actually bought by Lafount, and the extra expense to Lafount resulting from his prorating agreement with the Cohens was not indicated, the result was the completely false picture given the Commission as to

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the total purchase price of the stock of the station.

Arrangements between individual stockholders of a licensee corporation to share the costs of stock acquisition, are of course quite proper. But such arrangements cannot be made the excuse for reporting to the Commission as the consideration paid for stock and received by each seller amounts having no relation to the actual amounts of money transferred at the time of the sale transaction, thus giving the Commission a totally false picture of the total consideration paid by the new stockholders.

2. The Statement Introduced in the Hearing on Respondent's Application for Increase in Power and Hours of Operation (Docket No. 4206)

In its decision, the Commission found that in a hearing on a 1937 application for modification of license, respondent had introduced a financial statement listing cash in the banks as of April 30, 1947, at $25,362, with liabilities at less than $700. In fact respondent then had only $362.11 in cash, and Lafount who introduced the balance sheet at the hearing on the application was aware that the additional $25,000 was at best a contingent promise of a loan of the money (R. 553–554). The Commission therefore concluded that this incident was one more example of the respondent's predeliction for submitting false statements and testimony "in order to convey such impressions as it deemed expedient" (R. 559).

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The hearing record makes evident that these findings and conclusions were supported by substantial evidence. In 1937, respondent applied for a construction permit to increase its power and extend its hours of operation. Hearings were held on this application on May 3, 1937. During the course of the hearings, Lafount, as a witness, identified and verified as authentic a balance sheet of the licensee which showed that, as of April 30, 1947, the corporation had total assets of $136,878.62, of which sum $25,362.11 was listed as "cash in banks" (R. 199, 401). In fact, no such sum was in the banks in the name of the corporation, the correct cash balance being only $362.11 (R. 298, 345–348). In seeking to explain this discrepancy during the hearings on the present renewal application, Lafount stated that the exhibit should have been labeled as a pro forma or proposed balance sheet of the resources which the licensee would have had if the application, which was denied on other grounds, had been granted (R. 345–348). The cash, it has claimed, was immediately "available" from the stockholders,[12] but, pending action by the Commission on

[12] It is interesting to note that when asked directly where the money was coming from, Lafount stated "I had arranged for that money with Mr. Cohen" (R. 348). It should be remembered that in May 1937, the Cohens were, according to the testimony of respondent, refusing to proceed with their contract to buy Nordblom's 300 shares because of alleged claims against the stock which they purchased. Apparently, if we are to believe respondent's story, the Cohens were un-

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the application, had not yet been transferred to the company's account. The labeling of the exhibit as the actual balance sheet of the corporation was a mistake. (R. 303.)

However, it is clear that the balance sheet cannot even be accepted as a true and accurate pro forma or proposed balance sheet. For if the money were made "available", a true picture of the corporation's financial position would not only show an increase of $25,000 in assets listed under cash, but also an increase of $25,000 on the liability side as an account payable to Lafount, or Cohen or whoever loaned the money—there being no indication in Lafount's testimony in the 1937 hearing (R. 345–346) that it was ever contemplated that the $25,000 was a gift—which would have been shown on the liability side as paid in or donated surplus—or was to be in exchange for the issuance of additional stock. In fact, however, the extra $25,000 was reflected among the liabilities as an increase in the value of the 1,000 shares of Class "B" stock already issued (R. 401) (*cf.* R. 300–303). When the application was denied, the balance sheet for the licensee reverted to a true picture of its actual cash position, and the value of the 1,000 shares of Class B stock was listed again as $56,676.42 (R. 441–442),

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willing to assume overt title to the stock representing their $4,500 investment by which they secured 30% of the voting stock but were willing to advance $25,000 to improve the operation of the station.

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the figure at which such stock had been carried on the corporation's books since it was originally issued and ever since (R. 352).

It is thus apparent that the incident is just another instance in which the respondent's private convenience was allowed to take precedence over its obligation to make complete and accurate disclosure of information requested by the Commission to aid it in carrying out its functions. The fact that in this particular instance the application was denied on other grounds is immaterial. The fact is that in listing potential assets as actual cash on hand respondent gave the Commission a false picture of its financial resources, which was obviously designed to induce favorable Commission action in its application for increased facilities.[13] As Judge Edgerton stated in his dissenting opinion below (R. 620):

> It did this consciously and deliberately . . . the witness's confidence, however well founded, in the availability of a loan, does not obviate the fact that a false statement was deliberately made.

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[13] On the basis of the admittedly incorrect showing, the examiner in the case found the applicant financially qualified to proceed with the proposed improvements in facilities and recommended that the application be granted. The Commission denied the application only because it found that objectionable interference from existing stations would prevent the applicant from providing adequate service. (See *Broadcasting Service Organization, Inc.*, 7 F. C. C. 242 (1939).)

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3. The Acquisition of 200 Shares of Class B Stock From Crockwell on July 28, 1938

The Commission found in its decision that on July 19, 1937, Arde Bulova loaned Crockwell $5,000 on a six month note secured by Crockwell's remaining 200 shares of Class B stock. The note was dishonored and, on July 28, 1938, Davison bought in the stock at the foreclosure sale for Bulova for a payment of $100 advanced by Lafount. Subsequently, on September 30, 1938, before any report of the transaction had been made to the Commission, Bulova transferred the stock to Sanford Cohen, who repaid Lafount the $100 and assumed liability for the $5,000 debt owed Bulova. The only report on the transfer of this stock made by respondent was filed on November 22, 1938; it reported a sale of the 200 shares on September 30, 1938, from Crockwell directly to Sanford Cohen for a total consideration paid and received of $100. Cohen later repaid the remainder of the $5,000 to Bulova but no report of the extra expense was ever made. (R. 547–548.) The Commission concluded therefore that two transfers, the July 27, 1938 transfer of the 200 shares from Crockwell to Bulova and the September 30 transfer from Bulova to Sanford Cohen "which should have been reported to the Commission under Rule 43.1 and its predecessor . . . were not reported" (R. 559). The record fully substantiates both finding and conclusion.

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On July 12, 1937, at Lafount's request, Arde Bulova loaned Crockwell $5,000 on a six months' note (R. 35). As security for this loan, Crockwell pledged the 200 shares of Class B stock still owned by him. In addition, Lafount guaranteed repayment of the loan. The stock remained so pledged until July 28, 1938 (R. 137–8). No report was ever made to the Commission concerning the facts of this pledge agreement.

At the time of the pledge it may not have been necessary to report the agreement to the Commission under the terms of Broadcast Division Order No. 2 then in effect. (Appendix A, *infra*, p. 82.) But on May 11, 1938, the Commission promulgated Rule 340.01, which required all licensees to submit within 30 days certain information required by Commission Form 728, including a request for "information * * * relative to all contracts (written or oral) or other instruments which affect or concern * * * (2) The ownership or control over the station or rights of interest therein." On July 11, 1938, when the stock was still so pledged, and almost six months after the date on which the loan was due to be repaid, applicant executed the required Form 728, which was signed by Lafount, as president, and filed with the Commission. This form showed Crockwell as the owner of the 200 shares, and, in answer to the question concerning instruments affecting ownership or control of rights and interests in the station, applicant typed the word

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"None" (R. 435). It is clear, however, that the pledge agreement was such an instrument, and that Lafount who had arranged for the loan and who had personally guaranteed Bulova that it would be repaid (R. 140), was aware of its existence. Yet no explanation of the failure to report the pledge agreement was ever made by respondent.

On January 12, 1938, the loan became due, but Crockwell defaulted and the note was not honored. Efforts were made to secure payment by Crockwell but finally, on July 27, 1938, the stock pledged as security for the loan was sold at auction. Lafount claims that he instructed Davison to buy in the stock at the auction and Davison did so for $100 advanced by Lafount. (R. 137–9.) The stock was purchased in the name of Arde Bulova, and since Bulova was the creditor on the debt, the $100 proceeds of the auction were paid to him (R. 268–9). No report of the transaction was made at the time or within 30 days of the sale as required by the Commission's Rules, though for more than two months Bulova continued to be the record owner of the stock. On September 30, 1938, over two months after the original sale, but before any report of its occurrence had been made to the Commission, Bulova transferred the 200 shares to Sanford Cohen (R. 402). Sanford Cohen testified that he repaid Lafount the $100 he had advanced (R. 139), that he also agreed to make to Bulova full repayment of his $5,000 loan

to Crockwell (R. 35) and, when it proved impossible to secure the money from Crockwell, later, at some undisclosed date, repaid Bulova the full $5,000 (R. 231, 270)—a payment which was never reported to the Commission.

On November 22, 1938, almost two months after this second transfer and four months after the original forclosure of the shares, respondent, for the first time, reported to the Commission information concerning the transfer of the stock. But this report, prepared by George Cohen, signed by Lafount, and filed on FCC Form No. 730 (R. 436–438), merely indicated that a single sale of the 200 shares had taken place on September 20, 1938, from Crockwell directly to Sanford Cohen. It was stated that Crockwell received and Sanford Cohen paid $100 as total consideration for the sale. No mention was made of the pledge of the stock to Bulova, the foreclosure and sale, or the arrangement between Bulova and Cohen for repayment of the loan as consideration for the transfer.

It is thus clear that respondent's reporting of the facts surrounding the transfer of the 200 shares to Sanford Cohen was deficient in almost every conceivable respect. The original pledge agreement was never reported, the sale at auction to Bulova on July 28, 1938, was never reported, and the subsequent resale from Bulova to Sanford Cohen on September 20, 1938, was never reported. Instead, on November 22, 1938, almost four

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months after Crockwell had ceased to have any interest in the shares, respondent reported a completely fictitious sale of the stock on September 30, 1938, from Crockwell to Cohen for $100.

Nor can the reported transaction be accepted as a summary of the various transactions. For while Crockwell owned the stock (subject to the pledge) prior to July 28, 1938, and Cohen owned the stock subsequent to September 30, 1938, Crockwell did not receive the $100 in consideration for the sale to Cohen. The $100 payment by Davison went, as Cohen admitted, to Bulova, as the creditor on the $5,000 loan (R. 269). The $100 "credit" to Crockwell spoken of by Cohen (R. 269) has no significance, since it appears that Cohen or Bulova collected nothing from Crockwell on the debt (R. 231). The consideration running to Crockwell for the pledge of the 200 shares to Bulova, later foreclosed, was clearly the loan of $5,000 he had received from Bulova and never repaid. The consideration promised, and ultimately paid by Sanford Cohen to Bulova was repayment of the $5,000 (R. 231). Unless a fair disclosure of the relevant facts, including the participation of Bulova with respect to this transaction were made, no intelligible report meaningfully reflecting any of the relevant facts could be made. The fact that Cohen did not immediately repay Bulova for the $5,000 uncollected from Crockwell (R. 231, 270) did not make the consideration for the acquisition of the stock by

Cohen $100, even at the time of reporting, as he seems to suggest (R. 270). The $100 figure given in the report of November 22, 1938, as the consideration paid and received for the transfer of the stock is a strictly fictitious figure having no relation to the actual consideration paid and received.[14]

The explanation given by the respondent both before the Commission and the court below for these discrepancies is that the purchase at the auction was, from the beginning, to have been for Cohen, that Davison made the purchase in Bulova's name because of a legal technicality which Davison thought would delay the transfer if the stock were sold to one other than the pledgee (R. 139), that both Bulova and Cohen were angry when they heard about the purchase, that when Sanford Cohen returned to New York in September "the cleanest way to clear the title was to have Arde Bulova make a simple assignment of the stock to me [Cohen] so as to show the actual facts" (R. 231), that Cohen was the owner of the stock, at all times subsequent to July 28, 1938, and that the purchase price was given as $100 on the November 22nd report because that was all Cohen had paid up to that time. No explanation

[14] Cohen also suggested (R. 269) that the $100 might represent the expenses and legal fees connected with the sale. But the information required by the Commission as to the consideration paid and received is, of course, not merely a request for information as to the expenses incurred in consumating the transaction.

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is given for failing to report the later payment of $5,000 to Bulova except that it might have been "an error in judgment" (R. 270). No explanation is given for reporting the date of the transfer of the 200 shares from Crockwell as September 30, 1938, instead of July 28, 1938, in spite of respondent's claim that Cohen was at all times the owner of the stock.[15]

Moreover, it is clear that even if respondent's explanation why it acted as it did in relation to the transfer of the 200 shares is accepted at face value, it does not serve as an excuse for its incorrect reporting of the series of events to the Commission. Assuming Davison was not acting in accordance with instructions when he purchased the stock in Bulova's name, the fact remains that he did so purchase it. Under the Commission's Rules this transfer should have been reported within 30 days. Yet, on August 28 (and on September 28, as well), the stock was

[15] Sanford Cohen testified (R. 231) that $100 was reported as the consideration paid, because it was at first believed some or all of the money could be recovered by suing Crockwell for the deficiency. But when, through a letter to Lafount from Davison (R. 362), the Cohens became aware in 1938 that Nordblom had claims against Crockwell, it became obvious that suing Crockwell would be throwing good money after bad. He thus became obligated to pay the $5,000 to Bulova. The difficulty with this explanation is that the letter referred to by Sanford Cohen was received by Lafount on April 25, 1938, long before the foreclosure on July 18, 1938. Hence by his own admission Cohen knew *at that time* that the 200 shares would cost him $5,000.

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still in Bulova's name. Any excuse for failure to report an erroneous transaction, if, within the thirty-day period, the error had been corrected, could not avail the respondent for, when the period expired and the stock was still in Bulova's name, that fact should have been reported to the Commission, even if a subsequent report of the further transfer from Bulova to Sanford Cohen would be required. The requirement that all licensees report sales of stock interests promptly to the Commission was not made as a convenience to the licensee, but rather in order that the Commission charged with the regulation of radio broadcasting could have up-to-date information as to the exact status of all licensees. If the transfer from Bulova to Sanford Cohen was "the cleanest way to clear the title * * * so as to show the actual facts" on the books of the appellant (R. 231), the Commission was also entitled to be informed of the "actual facts" and its rules and regulations required that such information be furnished. There can be no excuse for carrying Crockwell as the owner of 200 shares of Class B stock for almost four months after he had ceased to have any interest in the shares. Nor can the convenience of the licensee excuse the fact that the report when finally made and filed with the Commission—almost two months after the September 30, 1938, transfer from Bulova to Sanford Cohen—gave September 30, 1938, as the date on

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which Crockwell transferred his stock [16] and $100 as the amount Crockwell received.

4. The Purchase of 900 Shares of Class A Stock by Lafount From Crockwell on March 8, 1939

The undisputed facts concerning this incident, as found by the Commission (R. 548) give one more instance of wilful disregard on the part of the respondent of its responsibilities as a licensee. Crockwell, at some unspecified date prior to March 8, 1939, pledged 900 shares of Class A stock to the Raldne Realty Company as security for a loan of approximately $2,400 (R. 37–38, 98–99), but as in the case of the pledge of the 200 shares of Class B stock to Bulova, *supra,* at p. 53, respondent did not report the existence of the pledge agreement to the Commission as required by Commission Rule 340.01 (R. 354–5). In March 1939, Lafount, who had heard of the pledge, was informed that Crockwell had defaulted, and that the stock was to be sold at auction. He then instructed Davison to purchase the stock for him for $2,450, which Davison did on March 8, 1939 (R. 99). A new certificate for the 900, A–6, shares was made out in Lafount's name on the same date (R. 355).

However, no report was made of this transaction within 30 days, as required by the Commis-

[16] It will be noted that Form 730 has separate places to indicate the dates of relinquishing and acquiring stock and for the amounts paid or received to take care of just such instances as the present one where this information is not identical for the seller and the ultimate buyer (R. 436).

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sion's Rules. Respondent filed renewal applications with the Commission on June 19, 1939 (R. 418–419) and January 27, 1940 (R. 420–421). In neither of these applications did it give information with respect to the distribution of its Class A stock, although previous answers to the same question [17] on earlier renewal applications had given such information (R. 413, 414, 416). On April 1, 1940, however, respondent filed an application for a broadcast station construction permit. This application contained a question, 9 (g), which specifically asked about the number of "each class" of shares held and respondent consequently listed Lafount as owning 900 shares (R. 422). Since the Commission had no record of Lafount having purchased or otherwise secured such shares, an inquiry was sent to the station by the Commission concerning the matter, and in response to this inquiry, respondent, on April 15, 1940, filed a report showing that the 900 shares had been transferred from Crockwell to Lafount on March 8, 1939, for a total consideration of $2,450. No explanation is given by the respondent for the failure to file the transfer report on time other than it was an oversight, and that Lafount was "shocked" when he was informed the Commission was asking about it (R. 38). It should be pointed out, however, that Lafount also

[17] "7d. Give names and addresses and citizenship of all stockholders owning and/or voting 10 percent or more of applicant's stock and percentage of stock held by each."

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admitted on cross-examination that the "oversight" was gross negligence on his part as President of the licensee, and stated further that "there always was some question, not too serious, but some discussion as to whether or not it was so important a stock that was not voted, but should have been filed" (R. 210)—thus indicating that the "oversight" was at least in part a conscious one.

5. The Transfer of 100 Shares of Class A Stock from Crockwell to Lester Endlar on June 29, 1938

Respondents Exhibit 5, a summary of the actual stock book record of the respondent corporation shows that on June 29, 1938, Crockwell transferred 100 shares of Class A stock to one Lester Endlar (R. 358, 98). However, as the Commission found in its decision (R. 548), at no time did respondent ever file a transfer report showing the details of the transaction. Consequently, it does not appear at any place in the record what, if anything, was the consideration paid by Endlar to Crockwell for the 100 shares. Form 728 filed with the Commission on July 14, 1938, did show Endlar as the owner of the 100 shares (R. 434), as did several other reports and applications filed prior to Endlar's subsequent sale of the stock on September 24, 1940 (R. 416, 423, 425). No explanation for the failure to report the transfer and the consideration has been advanced by respondent.

6. The Sale of 100 Shares of Class A Stock by Endlar to Lafount on September 24, 1940

On September 24, 1940, Lafount purchased the 100 shares of Class A stock owned by Endlar for $3,100 (R. 38–39, 100, 207–208). In spite of the purchase, however, a new certificate in Lafount's name was not issued until March 31, 1941, over five months later, the reason advanced by Lafount being that someone was "out of the city" (R. 100). On May 1, 1941, respondent filed FCC Form 730 with the Commission showing that a transfer of 100 shares from Endlar to Lafount had taken place on March 31, 1941 and also that Lafount paid Endlar $3,500 for his stock (R. 355).

Respondent explained the delay in reporting the transfer as an "oversight". It stated that $3,500 was given as the consideration rather than the $3,100 which Endlar actually received because the report includes "lawyers' fees" (R. 208). But it should be pointed out that in no other transfer report did respondent include any legal fees along with the consideration for the transfer. Moreover, even if this could account for listing $3,500 as the "amount paid" by Lafount for the stock, it would still not justify listing more than $3,100 as the "amount received" by Endlar. As previously indicated, Form 730 requires separate information as to the consideration received by the seller and that paid by the buyer to allow for just such contingencies as that which respondent

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claims existed in the present instance. Moreover, since the transfer admittedly took place on September 24, 1940, no reason exists for giving March 31, 1941, as the date in the transfer report, even if the late filing was a mere "oversight."

From the discussion above, it is evident that there is substantial and, indeed, conclusive evidence to support the Commission's conclusions that respondent's misrepresentations and concealments of facts concerning its stock ownership and financial status were the result either of its deliberate purpose to deceive the Commission and to withhold information from it or, at least, resulted from respondent's complete indifference to, and disregard for, its duties and responsibilities as a licensee. The decision of the court below holding that there was "no evidence at all" to support the Commission's findings and that the hearing record "amply" supported respondent's claims of "good faith" may properly be characterized by the words of this Court in *Federal Trade Commission* v. *Algoma Lumber Company,* 291 U. S. 67, 73 that:

> "The findings of the Commission as to facts, if supported by testimony, shall be conclusive" * * * The Court of Appeals, though professing adherence to this mandate, honored it, we think, with lip service only. In form the court determined that finding of unfair competition had no

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> support whatsoever. In fact what the court did was to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences. * * *

B. THE COURT BELOW ERRED IN HOLDING THAT THE COMMISSION COULD NOT, IN THE ABSENCE OF DIRECT EVIDENCE OF A REVEALED MOTIVE, PROPERLY INFER FROM THE FACTS CONCERNING THE ADMITTED MISREPRESENTATIONS AND CONCEALMENTS OF THE RESPONDENT AND ITS INABILITY TO OFFER ANY EXPLANATION WORTHY OF BELIEF THAT ITS ACTIONS WERE CAUSED EITHER BY ITS KNOWING AND WILFUL INTENT TO DECEIVE THE COMMISSION OR WERE THE RESULT OF GROSS AND RECKLESS DISREGARD OF ITS OBLIGATIONS AS A LICENSEE

The court below did not rely alone upon its conclusion that there was no evidence in the record to support the Commission's conclusion that respondent acted wilfully or recklessly and failed to substantiate its claims of "good faith". For the decision below also appears to hold that since there was no specific direct evidence of wilfulness or recklessness, and no express motive for the concealments had been established by the Commission, the Commission could not properly infer such wilfulness or recklessness, and the case was, thus, properly distinguishable from this Court's ruling in *Federal Communications Commission v. WOKO*, 329 U. S. 223 (R. 616–617). There is, however, no warrant whatsoever for this conclusion. To hold that a course of admitted falsifications and concealments, either entirely unexplained or explained by testimony demonstrably

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unworthy of belief, is an insufficient basis from which to draw an inference of wilfulness or at least total disregard for the licensee's responsibilities, runs counter to decisions of this and other courts that administrative agencies may infer a purpose to violate statutes or rules or regulations from circumstantial evidence which reasonably supports such inferences. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 597; *Republic Aviation Corporation* v. *National Labor Relations Board*, 324 U. S. 793, 800; *F. W. Woolworth Co.* v. *National Labor Relations Board*, 121 F. 2d 658, 660 (C. A. 2). As Judge Parker, speaking for the Court of Appeals for the Fourth Circuit in *Hartsell Mills Co.* v. *National Labor Relations Board*, 111 F. 2d 291, 293, has stated:

> direct evidence of a purpose to violate the statute is rarely obtainable; and * * * where the finding of the Board is supported by circumstances from which the conclusion of discriminatory discharge may legitimately be drawn, it is binding upon the courts.

And even where the evidence would support more than one inference the court will not substitute its judgment for that of an administrative agency. *Swayne and Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 307; *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105, 107.[18]

[18] In its decision below, the court stated that "the record is replete with evidence that [respondent's] agents were care-

Nor does the fact that the evidence may be insufficient to establish a specific underlying motive for respondent's course of action prevent the Commission from drawing an inference that, whatever the motive, respondent's course of conduct was clearly wilful or reckless.[19] In the

less and inaccurate and, perhaps, lacking in good judgment as to the reports required by the Commission, but none of these characteristics *in themselves* imply bad faith" (R. 617). [Italics supplied.] The Commission, however, did not infer respondent's bad faith from the fact of its misstatements alone, but from the fact that respondent was unable to give any explanations worthy of belief for the various misstatements and "conceded mistakes." Moreover, while respondent's numerous errors and misstatements in its reports and statements to the Commission might not "in themselves" imply bad faith, it would appear that in the absence of adequate and sufficient explanation, they would at least reasonably imply gross carelessness and recklessness. But at a later part of its opinion, the court below states that such carelessness or recklessness is also not shown by the record (R. 618).

[19] The existence of circumstances showing a wilful and reckless disregard of the facts has long been recognized as sufficient to supply the want of a specific intent in tort as well as criminal law situations in which an intent to deceive or to do other unlawful acts is required. Thus in a criminal proceeding, where the criminal intent or *mens rea* must be established, no specific motive or intent to bring about the criminal act need be established when it is shown that the defendant acted with reckless and wilful disregard of the consequences of his conduct under circumstances when the harmful consequences of that conduct could have been foreseen. See *People* v. *Jernatowski*, 238 N. Y. 188, 144 N. E. 497; *Commonwealth* v. *Pierce*, 138 Mass. 165 (Holmes, J.); Holmes, *The Common Law*, pp. 135–137.

Similarly, liability for fraud and deceit may be imposed in situations where the conduct in issue manifests a "reckless

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WOKO case, *supra*, the motive which impelled the licensee to misrepresent its stock ownership to the Commission was completely extraneous to the licensee's relations with the Commission and concerned a stockholder's relationship to a third party unconnected with the licensee. 329 U. S. 223, 225–226. The "fact of concealment" rather than the facts concealed or the reason therefore was held to be significant.

But the principal error of the respondent and the court below in relying upon the absence of a proved motive for the concealments and misrepresentations, rests in the failure to realize that a person might well be as unqualified to be a radio licensee if he is incapable of meeting the duties and responsibilities of broadcast licensees, or indifferent to their proper fulfillment as if he consciously evades or circumvents such requirements. And, it is this very attempt to confine the authority of this court's *WOKO* decision to those cases in which concealment is wilful and deliberate,

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indifference to error" (Cardozo, J., dissenting, in *Smith* v. *Hedges*, 223 N. Y. 176, 119 N. E. 396, 399), or "heedlessness and reckless disregard of consequence." (*State Street Trust Co.* v. *Ernst*, 278 N. Y. 104, 15 N. E. 2d 416, 419.)

This doctrine, of the "external standard," so well established in other comparable situations, is applicable with especial force when the purpose of the inquiry is to ascertain whether the duties of a licensee, especially the duty to make timely and truthful reports, will be discharged in a responsible manner.

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which most clearly demonstrates the fallacy of the holding below.[20]

As Judge Edgerton stated in his dissenting opinion (R. 620):

> Even if [respondent's] falsehoods had been merely reckless or negligent rather than willful, they would still have supported the Commission's finding that "the continued series of misrepresentations and concealments * * * demonstrates that the applicant does not possess the necessary character qualifications of a licensee of radio station, and that the public interest, convenience and necessity will therefore not be served by a grant of a renewal of license to the applicant." The Communications Act does not forbid the Commission to regard mere indifference to truth as contrary to the public interest.

And this fact has been expressly recognized by the court below in upholding Commission decisions denying renewal of station licenses to licensees who had habitually violated the technical and procedural rules and regulations of the Federal

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[20] The Court also attempts to distinguish *WOKO* from the present case on the grounds that in the *WOKO* case "there was false testimony given at Commission hearings, whereas in the instant case the witnesses before the Commission were *completely candid* in their testimony." (R. 617, italics supplied.) The Commission found, however, on the contrary, that important aspects of the story told by respondent's witnesses were contrary to fact or unworthy of belief (R. 556, 560). The supporting evidence for this finding has been fully explored in Point A, *supra*, at pp. 15–66.

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Communications Commission where there was no evidence or allegation that these violations resulted from anything but negligence or indifference on the part of the licensee. *Charles C. Carlson* v. *Federal Communications Commission,* 172 F. 2d 766, pending on petition for a writ of certiorari, No. 689, this Term; *Greater Kampeska Radio Corporation* v. *Federal Communications Commission,* 108 F. 2d 5. It is apparent, moreover, that since one of the basic qualifications of a radio station licensee is its ability to comply with the valid rules and regulations of the Commission and to file accurate and prompt reports of such activities as the Commission requires it be kept informed of, it is immaterial, from the Commission's point of view, whether a particular licensee falls below the reasonable standards of compliance because of indifference or negligence or because of a deliberate desire to mislead the Commission. There is thus no basis for confining the *WOKO* decision of this Court narrowly to its facts because, in that particular case, the misrepresentations happened to result from a clearly proved intent to deceive for specific motives which were also clearly established.

C. THE COURT BELOW IMPROPERLY CONSIDERED MATTERS WHICH THIS COURT HAS HELD TO BE IRRELEVANT TO THE COMMISSION'S DETERMINATION AND OTHER MATTERS NOT PART OF THE HEARING RECORD

In *Federal Communications Commission* v. *WOKO,* 329 U. S. 223, this Court expressly re-

versed the decision of the Court of Appeals for the District of Columbia Circuit that before the Commission could determine that renewal of a station license was not in the public interest because of misrepresentations to the Commission, the Commission was obliged to make findings with respect to the station's past program service and its equipment, plans and resources for good service in the future and to consider these findings along with the findings concerning misrepresentation in determining whether a grant of the renewal would be in the public interest. This Court stated (329 U. S. at 229):

> It may very well be that this Station has established such a standard of public service that the Commission would be justified in considering that its deception was not a matter that affected its qualifications to serve the public. But it is the Commission, not the courts, which must be satisfied that the public interest will be served by renewing the license.

It thus affirmed the contention of the Commission that "it cannot be required to exercise the discretion vested in it to entrust the responsibilities of a licensee to an applicant guilty of a systematic course of deception" (*ibid*) without regard to such applicant's other qualifications for a license. In the instant case, the court below has not expressly questioned this holding of the *WOKO* decision, *supra;* it has, however, in fact nullified

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this holding by applying again the very considerations rejected in this Court's decision.

Throughout the opinion, the court below emphasizes its conclusions that the present stockholders of the respondent corporation, who are involved in the various misrepresentations and concealments which are the subject of the Commission's determination, have built up the station's financial standing from a losing proposition to a station which at the time of the hearing was both solvent and prosperous; and that the station has maintained an outstanding public service record. The majority of the court below states that this record, on the part of the respondent, expressly negatives any projection of its misrepresentations and false reports over to "the management and conduct of [its] business as a radio broadcasting licensee" (R. 617) "and demonstrates an awareness of its responsibilities and duties as a licensee and its obligations to the public" (R. 618). It is clear, therefore, that the court below has in fact incorporated into its decision in the instant case the very principle of law which this Court rejected in the *WOKO* case—that the Commission may not conclude that a licensee's record of misrepresentation and concealment demonstrates its unfitness to continue as a licensee where the Commission has not also found that the licensee's program service or financial standing are inadequate (R. 612, 617, 618).

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It should be pointed out that in its decision, the Commission considered the matter of the relationship of the respondent's history of misstatements and concealment to its other qualifications to continue as a broadcast licensee and specifically concluded "that this want of the requisite character qualification is so serious that the rendition of a satisfactory broadcasting service by the applicant cannot serve to detract from this conclusion" (R. 563). This court, in the *WOKO* case, 329 U. S. at 229, expressly affirmed the authority of the Commission to reach such a conclusion even if the falsities were not of the "duration and character" of that involved in the *WOKO* case. The Court of Appeals, however, holds otherwise.

The court below also advanced, as an alternative reason for ruling that the Commission acted arbitrarily in refusing to renew the WORL license, a contention based on material admittedly not a matter of record in the case to the effect that "the Commission condoned in 1942 some of the very same actions of [respondent] that it is now condemning *and upon which the refusal to renew is being based*" (R. 619). [Italics supplied.] This conclusion is based upon material appearing in respondent's brief below purporting to show that the Commission had full knowledge, at the time it granted respondent's renewal application in 1942, that Lafount and Sanford Cohen had, in 1937 and 1938, acquired a

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60% controlling interest in the voting stock of the respondent corporation "in alleged violation of Section 310 (b) of the [Communications] Act which prohibits transfer of control of a licensee without express Commission consent" (R. 618–619). This determination is, however, erroneous for at least three separate reasons: The Commission's refusal to renew respondent's license was not based upon any alleged violation of Section 310 (b) of the Communications Act; the material upon which the court below based its determination that there had been a "condonement" was not properly a matter of record before the court; and, finally, the facts of record clearly show that there was no evidence before the Commission in 1942 indicating that Lafount and Sanford Cohen were in any way connected in their purchase or ownership of stock in respondent corporation, or that any transfer of control to Lafount and Cohen, acting jointly, had taken place.

The Commission expressly concluded that in view of the evidence concerning misrepresentations and concealment, it was not necessary "to determine whether the failure of the applicant at any time to file an application with the Commission for transfer of ownership and control to the present stockholders constituted a violation of Section 310 (b) of the Act, which would independently warrant a denial of the application for renewal of the station license." (R. 563.) And

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it is clear that any condonement of an illegal transfer could not in any way affect the propriety of the Commission's (1) treating as a bar to renewal the fact that respondent had prior to 1942 *and thereafter* concealed other facts, and (2) concluding that this conduct viewed as a whole demonstated that a renewal of respondent's license would not serve the public interest.

Moreover, while it was clearly improper for the court below to go outside the hearing record in reaching its determination that the Commission had condoned an illegal transfer in 1942, competent evidence in the record demonstrates clearly that no such condonement occurred. Respondent's report of March 27, 1937, showing the acquisition of 400 shares of Class B stock by Lafount (R. 399–400) and the report of October 26, 1938, disclosing the acquisition of 200 shares of Class B stock by Sanford Cohen (R. 436–438) did not in any way indicate that Sanford Cohen and Lafount were operating together in any manner in their purchases or ownership of respondent's stock. Since neither Lafount nor Cohen was reported as owning a majority of the voting stock, the reports disclosed no transfer in violation of Section 310 (b). But, in any event, even if there had been a condonement of an illegal transfer, it would not have excused respondent's numerous other misrepresentations and concealments.

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CONCLUSION

The judgment of the court below should be reversed with instructions to enter a judgment affirming the decision of the Federal Communications Commission.

Respectfully submitted.

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Federal Communication Commission.

MAY 1949.

APPENDIX A

The pertinent provisions of the Communications Act of 1934, c. 652, 48 Stat. 1064, as amended May 20, 1937, c. 229, 50 Stat. 189, 47 U. S. C. 151, *et seq.* are as follows:

> SEC. 308. (a) The Commission may grant licenses, renewal of licenses, and modification of licenses only upon written application therefor received by it: *Provided, however,* That in cases of emergency found by the Commission, licenses, renewals of licenses, and modifications of licenses, for stations on vessels or aircraft of the United States, may be issued under such conditions as the Commission may impose, without such formal application. Such licenses, however, shall in no case be for a longer term than three months: *Provided further,* That the Commission may issue by cable, telegraph, or radio a permit for the operation of a station on a vessel of the United States at sea, effective in lieu of a license until said vessel shall return to a port of the continental United States.
>
> (b) All such applications shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is

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proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.

* * * * *

SEC. 309. (b) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized herein.

(2) Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act.

(3) Every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof.

* * * * *

SEC. 310 (b) The station license required hereby, the frequencies authorized to be used by the licensee, and the rights therein granted shall not be transferred,

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assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer of control of any corporation holding such license, to any person, unless the Commission shall, after securing full information, decide that said transfer is in the public interest, and shall give its consent in writing.

* * * * *

SEC. 312. (a) Any station license may be revoked for false statements either in the application or in the statement of fact which may be required by section 308 hereof, or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application, or for failure to operate substantially as set forth in the license, or for violation of or failure to observe any of the restrictions and conditions of this Act or of any regulation of the Commission authorized by this Act or by a treaty ratified by the United States: *Provided, however,* That no such order of revocation shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed revocation, has been given to the licensee. Such licensee may make written application to the Commission at any time within said fifteen days for a hearing upon such order, and upon the filing of such written application said order of revocation shall stand suspended until the conclusion of the hearing conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of revocation.

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SEC. 402. (b) An appeal may be taken, in the manner hereinafter provided, from decisions of the Commission to the Court of Appeals of the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

(2) By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

(3) By any radio operator whose license has been suspended by the Commission.

* * * * *

SEC. 402. (e) At the earliest convenient time the court shall hear and determine the appeal upon the record before it, and shall have power, upon such record, to enter a judgment affirming or reversing the decision of the Commission, and in event the court shall render a decision and enter an order reversing the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court: *Provided, however,* That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari

on petition therefor under section 240 of the Judicial Code, as amended, by appellant, by the Commission, or by any interested party intervening in the appeal.

Extracts From Rules and Regulations of the Federal Communications Commission

Federal Communications Commission Broadcasting Division Order No. 2 [adopted August 21, 1934]. Pursuant to the provisions of Section 310 (b) of the Communications Act of 1934 (approved June 19, 1934), it is ordered, that the licensees of all radio broadcast stations (including all special or general experimental, visual broadcast, relay broadcast or broadcast stations) shall, on or before September 15, 1934, file with the Commission verified statements showing the following information, as of July 15, 1934:

1. If the licensee is a corporation—

(a) A list of the stockholders of record, together with the address and the amount of stock held by each;

(b) Whether the stock is voted by a person other than the record holder, and if so, copy of the agreement or other instrument authorizing same;

(c) A list of the officers and directors of said corporation, together with their addresses and the amount of stock held by each;

(d) Any other arrangement or agreement with any person or corporation which may affect the conduct or control of the business of the licensee corporation.

* * * * *

Sec. 340.01, F. C. C. Rules and Regulations [Adopted May 11, 1938, 3 F. R. 1193].

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ORIGINAL REPORTS REQUIRED OF LICENSEES AND PERMITTEES OF ALL CLASSES OF BROADCAST STATIONS AS TO OWNERSHIP, CONTROL, OPERATION, INTERESTS THEREIN; CONTRACTS WITH OTHERS

1. Licensees and permittees of all classes of broadcast stations shall, within 30 days from adoption of this Rule, or within 30 days after becoming permittees or licensees, file with the Commission original reports containing the information required by F. C. C. Form 728 or F. C. C. Form 729 attached hereto, and made a part hereof.

SUPPLEMENTAL REPORTS

2. Thereafter, and within 30 days of the occurrence of any event which necessitates a change in information already reported, all such licensees or permittees shall file supplemental reports containing the information required by F. C. C. Form 730 attached hereto, and made a part hereof.

* * * * *

THE TERM "CONTRACT" INCLUDES VERBAL UNDERSTANDINGS

5. The term "contract" as it appears on the forms provided by this Rule shall be construed to include every contract, understanding, or agreement, verbal or written. Verbal contracts shall be reduced to writing and certified copies thereof submitted.

ORDER NO. 2, BROADCAST DIVISION, REPEALED

6. Order No. 2, promulgated August 21, 1934, by the Broadcast Division of the Commission with amendments thereto, is hereby repealed.

COPY

F. C. C. Form No. 728: Statement of Information Required To Be Filed by Permittee or Licensee Corporation Under Rule 340.01 [1]

* * * * *

III. * * *

* * * * *

If stock is beneficially held by a person (natural or artificial) other than the record holder (and such beneficial owner has not been identified in reporting the voter other than record holder) state the name, legal residence, and citizenship if a natural person; and if a corporation or other form of association or organization, state the name, legal residence, and citizenship of the person or persons empowered to designate the voter or voters of the stock, making these statements on an exhibit referred to by number in this column.

IV. Contracts or Other Instruments

Furnish the information indicated below relative to all contracts (written or oral) or other instruments which affect or concern: (1) The voting rights of any stock. (2) The ownership or control over the station or rights or interests therein. (3) The use, management or operation of the station by any person or entity, other station, chain of stations, or chain broadcasting company. (4) The sale or disposition of time amounting to two hours or more daily to (a) any other station, chain of stations, or chain broadcasting company, and/or any person or entity.

[1] This form is set out in full at R. 433–435.

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(5) The purchase or acquisition of time amounting to two hours or more daily from (a) any other station, chain of stations, or chain broadcasting company, and/or (b) any person or entity.

Furnish certified copies of all contracts (written or oral). Oral contracts shall be reduced to writing.

Name, address, and citizenship of person or entity with whom contract or instrument entered into.

Effective and termination dates of contract or instrument.

Subject matter covered by contract or instrument.

Certified copy is attached as Exhibit No.

If previously filed, state approximate date furnished to the Commission.

* * * * *

[Similar material is required by Form 730—The supplemental form to be used in reporting changes in information from that filed on Form 728. This form is set out at R. 436–438.]

SEC. 43.1, F. C. C. Rules and Regulations [Adopted July 12, 1939; 4 F. R. 3516].[2] "Information as to ownership, operation, interests therein, contracts, etc. Licensees and permittees of all classes of broadcast stations shall file reports as follows:

(a) Within 30 days after becoming licensees or permittees all such licensees or permittees shall file with the Commission original reports contain-

[2] This Rule was in effect at the time of the Commission's hearing.

ing the information required in accordance with the forms adopted and furnished by the Commission and the instructions in such forms. (F. C. C. Form 728 and F. C. C. Form 729.)

(b) Thereafter, and within 30 days of the occurrence of any event which necessitates a change in information already reported, all such licensees or permittees shall file supplemental reports containing the information required in accordance with the forms adopted and furnished by the Commission and the instructions in such forms. (F. C. C. Form No. 730.)

(c) All reports required hereby must be dated and executed under oath (or affirmed according to law) in accordance with the provisions of the form and show the date upon which each reported event occurred. One report (original or supplemental) may be rendered by a licensee or permittee covering more than one station provided the reported information relates equally to all stations. Otherwise, separate reports for each station must be filed.

(d) A licensee or permittee corporation which has of record on the date of submission of any report 1,000 stockholders or more, may file the information required herein as to stockholders who own 1,000 or more shares of the stock of said corporation.

(e) The term "contract" as it appears on the forms provided by this section shall be construed to include every contract, understanding, or agreement, verbal or written. Verbal contracts shall be reduced to writing and certified copies thereof submitted.

BLEED THROUGH – POOR C

Order No. 2, promulgated August 21, 1934 by the Broadcast Division of the Commission with amendments thereto, is hereby repealed. Section 43.1 replaces Rule 340.01 adopted by the Commission on May 11, 1938.

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APPENDIX B

Transfers of stock, WORL, March 1937 to November 1943

Dates of transactions and dates of filing	Class and amount of stock	Seller	Buyer	Consideration paid	Reported class and amount of stock	Reported seller	Reported buyer	Reported consideration	Reported date	Record
3-25-37	708 "B"	Eynon (150) Phelan (150) Nordblom (400)	Lafount (400) S. & G. Cohen (300)	32,500						82-83.
3-31-37					400 "B"	Nordblom (100) Eynon (150) Phelan (150)	Lafount	30,000	3-25-37	390-400.
6-29-38	100 "A"	Crockwell	Endlar	[1]						358.
7-26-38	200 "B"	Crockwell	Bulova	[2] 5,000						127-140, 220-221, 268-270.
9-30-38	200 "B"	Bulova	S. Cohen	[2] 5,000						402.
11-22-38					200 "B"	Crockwell	S. Cohen	100	9-30-38	385, 430-432.
3-8-39	900 "A"	Crockwell	Lafount	2,450						90.
4-15-40					900 "A"	Crockwell	Lafount	2,450	3-8-39	355.
9-24-40	100 "A"	Endlar	Lafount	3,100						100.
9-24-40	100 "B"	Nordblom	G. Cohen	[2] 1,500						140-142.
5-1-41					100 "A"	Endlar	Lafount	3,500	3-31-41	355.
9-24-43	100 "B" transferred on 9-24-40.[3]	Nordblom [3]	G. Cohen [3]	[2] 750						402-408.
11-17-43					100 "B"	Nordblom	G. Cohen	1,800	11-9-43	438.
12-2-43					300 "B"	Nordblom	S. Cohen (200) G. Cohen (100)	3,324 1,666	11-27-43	440.

BLEED THROUGH - POOR QUALITY

[1] The record fails to indicate what compensation, if any, Endler paid to Crockwell, since this transaction was never reported.

[2] Crockwell had pledged the 200 shares for a $5,000 loan from Bulova, later dishonored. At a foreclosure sale Davison bought in the stock in Bulova's name for $100, advanced by Lafount, and this sum went to Bulova as the creditor. When Bulova retransferred the stock to S. Cohen, the latter repaid Lafount the $100 he had advanced, and agreed to repay Bulova all of the difference of $4,900 which could not be recovered from Crockwell. None was secured from this source and S. Cohen paid Bulova $4,900 additional for the stock. It is clear, therefore, that Crockwell "received" the $5,000 amount of the loan, and the stock cost S. Cohen $5,000.

[3] Nordblom complained about this sale and on Nov. 26, 1942, Lafount paid Nordblom an additional $750 in settlement of his claim on the sale of 100 shares of class "B" stock. The record does not indicate whether G. Cohen ever paid Lafount the $750, or considered the $750 in arriving at the figure for his final settlement.

U. S. GOVERNMENT PRINTING OFFICE: 1943

BLEED THROUGH – POOR

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No. 584

IN THE

Supreme Court of the United States

October Term, 1948

FEDERAL COMMUNICATIONS COMMISSION,
Petitioner,

—v.—

BROADCASTING SERVICE ORGANIZATION, INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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BLEED THROUGH – POOR

IN THE

Supreme Court of the United States

October Term, 1948

No. 584

FEDERAL COMMUNICATIONS COMMISSION,

Petitioner,

—v.—

BROADCASTING SERVICE ORGANIZATION, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

Opinions Below

The Decision and Order of the Federal Communications Commission (R. 539-568, 600-601) have not yet been reported. The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 608-620) has not yet been reported.

Jurisdiction

The judgment of the Court of Appeals was entered on November 24, 1948 (R. 620-621). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

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Question Presented

Whether the Court below erred in holding that, as a matter of law, the Federal Communications Commission is not empowered by the provisions of the Communications Act of 1934, as amended, and the Decision of this Court in the *WOKO* case (329 U. S. 223) to deny the application for renewal of license of Station WORL on the ground that respondent does not possess the character to be entrusted with the responsibilities of a licensee, there being no substantial evidence to support the findings and conclusions of the Commission with respect thereto.

Statute Involved

The pertinent provisions of the Communications Act of 1934, 48 Stat. 1064, as amended, 47 U. S. C. 151, *et seq.* are set forth in the appendix to the Government Petition for Writ of Certiorari, pages 23-26.

Statement of Case

Because of certain inaccuracies and inadequacies in petitioner's statement of the case, respondent finds it necessary to review in detail the facts established by the record.

Broadcasting Service Organization, Inc. has been the licensee of Station WORL, which operates in Boston, Massachusetts, on 950 Kc., with 1 KW, daytime only, since November 20, 1931. That it has been and is rendering a meritorious program service in the public interest, convenience or necessity is established by the record and not questioned by the Commission (R. 288-296).

On May 27, 1944, respondent filed an application pursuant to Section 309 (a) of The Communications Act of 1934, as

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amended, for renewal of its station license. Thereafter, this application was designated for hearing. The hearing was held in the fall of 1944 before an Examiner designated by the Commission.

Present Organization of Respondent.

Broadcasting Service Organization, Inc. is a Massachusetts corporation with outstanding capital stock consisting of 1000 shares of non-voting Class A preferred and 1000 shares of voting common designated as Class B. Since November 1943 the officers, directors and stockholders have been:

Name	Office	A Stock	B Stock (Voting)
Harold A. Lafount	Director-President	1000	400
Sanford H. Cohen	Director	—	400
George Cohen	Treasurer	—	200
Robert E. Davison	Director-Clerk Secretary	—	—

(R. 235, 355, 391)

All are citizens of the United States and possess the qualifications required of officers, directors, and stockholders of a licensee corporation. In 1927, after a successful business career, Harold A. Lafount was appointed a member of the Federal Radio Commission. He left the Commission in 1934 and since then has been employed as General Manager of all the radio interests of Mr. Arde Bulova (R. 21-23, 305). Sanford H. Cohen, a former Assistant United States Attorney, and George Cohen are brothers who have been associated in the practice of law in New York City since 1920. Robert H. Davison of Boston is an attorney-at-law of highest reputation (R. 26, 27, 83, 225-27, 279, 305-6).

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The 1937 Agreements.

Prior to March 25, 1937 the stock of the licensee was distributed as follows:

Name	A Stock	B Stock
George A. Crockwell	400	200
James K. Phelan	300	150
William H. Eynon	300	150
Robert C. Nordblom	—	500

(R. 354, 386)

Station WORL had been steadily losing money and the stockholders decided to sell the stock (R. 62, 322). Negotiations were held with Crockwell. Nordblom, Crockwell, Phelan and Eynon entered into an agreement between themselves of their intended sale of 700 shares of the stock owned by them in the corporation owning and operating Radio Station WORL (R. 382). Lafount had nothing to do with this agreement and was not even aware of its existence (R. 57-8, 67, 71).

On March 16, 1937, Crockwell, Nordblom and Lafount entered into an agreement for the transfer of 400 shares of B Stock (300 to be supplied by Crockwell and 100 by Nordblom) to Lafount for a consideration of $48,000.00. Crockwell and Nordblom undertook to pay all the debts of the corporation existing on March 25, 1937 (with certain exceptions) from the proceeds of the sale, to reduce the liquidating value and the annual dividends of the preferred stock, and to cause certain changes in the by-laws of the corporation. The closing was set for March 25, 1937 (R. 385).

On March 25, Crockwell, Nordblom, Phelan, Eynon, Lafount and Ben S. .Fisher (attorney for Lafount and the Cohens) met at the office of Robert H. Davison, attorney

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for the licensee and its stockholders. An escrow agreement was entered into between Crockwell, Nordblom, Lafount and Davison providing that $48,000 was to be paid to Davison as escrow agent to pay off the debts of the corporation, the balance to be distributed 62½% to Crockwell and 37½% to Nordblom (R. 74, 75, 80, 81, 393). The Cohens not being present at the closing, Ben S. Fisher, as Agent, entered into a separate agreement with Nordblom whereby he (as such agent) agreed to purchase 300 shares of Class B stock for $4,500 (R. 396). A cashier's check in the amount of $52,500 was delivered by Lafount to Davison in payment for the 400 shares purchased by Lafount and the 300 shares purchased by the Cohens (R. 82-83). Temporary certificates were issued, one to Lafount for 400 shares and one to Nordblom for 300 shares. The latter was endorsed by Nordblom in blank and delivered to Lafount. The temporary certificate for 300 shares was issued in Nordblom's name because Lafount did not know at that time how the Cohens wanted their 300 shares apportioned between them (R. 106, 109, 115, 116). No arrangement was made at the closing as to how the permanent certificates were to be issued (R. 104). Though all the agreements were closed simultaneously, Lafount at all times considered his purchase of the 400 shares and the Cohens' purchase of 300 shares as separate transactions. They were two distinct purchases negotiated separately and based on separate contracts (R. 62-3, 76, 77, 83, 120, 172-3, 333).

Lafount's acquisition of 400 shares of Class B stock was reported to the Commission on March 31, 1937 (R. 399). Of the $48,000 Lafount paid for his 400 shares of B stock, $38,000 was used to pay off the existing debts of the corporation. The Cohens had agreed with Lafount that they would pay their share of the debts and that the cost of the 700 shares should be divided on a per share basis to equalize

OPY

the purchase price, Lafount's cost being $30,000 and the Cohens' $22,500 (R. 27, 76, 150, 151, 228, 243). For this reason the "Amount Actually Paid for Stock" by Lafount was reported as $30,000 (R. 112, 399). The consideration for the 600 shares of Class A stock acquired by Crockwell was reported as $26,400, the par value of $44 per share. The report of March 31, 1937 was prepared by Davison, Crockwell's attorney. At the time it was filed Lafount had no detailed knowledge of the arrangements among Crockwell, Nordblom, Eynon and Phelan for the settlement of the value of the A stock among themselves (R. 56, 66, 74, 399).

Claims Made Against the Stock.

Shortly after the closing date Crockwell started complaining to Lafount about the deal. He called frequently on Lafount, telling him that he wished to get the station back. He stated that Nordblom was dissatisfied too and something had to be done about it (R. 30-31, 103, 117, 155-157). Crockwell discussed his dissatisfaction with Nordblom and with many others. The subject was also considered at a number of directors' meetings (R. 332-333, 335-336, 339, 340). Though Crockwell was telling Lafount that Nordblom was dissatisfied, the latter never made any complaints or claims and testified that he never was dissatisfied with the transaction (R. 110, 327). The evidence is conflicting as to whether Nordblom ever expressed any dissatisfaction to Lafount. However, there is no question that Crockwell led Lafount to believe that both he and Nordblom were very displeased with the whole deal. Furthermore, it is clear that shortly after the March 1937 closing a dispute had arisen between Crockwell and Nordblom which continued over a considerable period of time (R. 110, 117-118, 155-158, 362). As all the negotiations leading up to the

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March 25, 1937 closing had been conducted with Crockwell, and as he had made all the complaints, Lafount attempted to straighten things out with him rather than with Nordblom whom he hardly knew (R. 30-31, 57-58, 117).

These complaints were received before Lafount had ascertained how the Cohens wished to have their 300 shares divided. When Lafount advised the Cohens of Crockwell's complaints, *they refused to permit the permanent certificates for the 300 shares to be issued in their names until all dissatisfaction had been ironed out and no further claims against the stock were outstanding* (R. 34-35, 109, 121, 143, 175-176, 228-229, 250). Pending the settlement of the differences a permanent certificate was issued in the same form as the temporary one. Nordblom endorsed it in blank, and on April 30, 1937 it was sent to Lafount. Nordblom testified that he did not recall why he permitted the stock to remain in his name but *believed* it was a matter of convenience to the buyers. He was glad, however, to remain a voting stockholder with 400 shares because the station was a tenant of the hotel he ran and it was good business for him to watch its progress (R. 32, 340, 342).

Early in 1939, before any settlement had been reached with Crockwell, both Davison and Crockwell advised Lafount that a Miss Natalie Whitwell claimed to own all the stock of the corporation (R. 31, 176, 222, 252, 333, 339-340, 359-360). On July 21, 1941 Hines, counsel for Miss Whitwell, wrote Lafount demanding that all the outstanding stock of the corporation be turned over to his client (R. 261-262, 361). In January 1942 Miss Whitwell brought a suit at law against the corporation in Massachusetts. The court held for the defendants (R. 31, 177-178, 228-230, 261-263). Hines wrote the Commission a series of letters beginning in June 1939 and ending in September 1941 in which he advised the F. C. C. of the Whitwell claims and complained about the

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ownership of WORL. As late as December 15, 1943, Hines, in testimony before a Congressional Committee, asserted claims against the Corporation on behalf of Miss Whitwell (R. 254).

Acts of Ownership.

The permanent stock certificate for 300 shares, endorsed in blank by Nordblom, was turned over to Sanford H. Cohen by Lafount immediately upon its receipt and remained in the Cohens' possession thereafter (R. 30, 121, 228, 280). The Cohens could have sold the stock or had it put in their names because the certificate was negotiable (R. 248, 250). However, the Cohens never voted the 300 shares of B stock. While it stood in Nordblom's name they never attended directors' meetings or stockholders' meetings. No dividends were ever paid on the stock (R. 263). Nordblom voted the stock at all times. In fact, he voted 400 shares of B stock at ten stockholders' and directors' meetings from March 5, 1937 up to and including April 16, 1943. There existed no arrangement or understanding governing the stock or the manner in which it should be voted (R. 123-126, 219, 265, 329, 335, 342, 364-373).

Reasons for Not Reporting the Acquisition.

Thus the B stock continued to be owned of record, 400 shares by Lafount, 400 by Nordblom and 200 by Crockwell (R. 33). Both Lafount and the Cohens believed that as there had been no transfer on the books of the Corporation, and as Nordblom remained the record holder of the 300 shares, it was proper for the applicant to report Nordblom as the holder of the stock. They did not think that the status of the stock had changed in any way as the certificates were still in Nordblom's name. They felt that any transfer

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to their names would be unwise at that time for they might wish to rescind the sale and ask for the return of their money. *In their minds the sale remained unconsummated and the deal had not been closed.* The evidence is clear that although the principals might have exercised poor judgment in this respect, if they made a mistake they did not make it in bad faith (R. 34, 112, 115-116, 117, 120, 223, 143, 175-176, 228-229, 250-252, 254, 280, 284). *Similarly, Lafount and the Cohens believed that in view of the circumstances and the uncertainty concerning the final transfer of the 300 shares of B stock to the Cohens it was unnecessary under Section 310(b) of the Act to apply for a transfer of control of the corporation. They did not think there had been a transfer of control within the meaning of the law* (R. 119, 120, 173-174, 254-255). Sanford Cohen was not admitted to practice before the Commission in 1937—his admission occurred in 1940. Commission records show that George Cohen has never been admitted to practice before the Commission. There is no evidence indicating that in 1937 either of the Cohens was familiar with the Rules and Regulations of the Commission. It is fair to infer—as was in fact the case—that in failing to report the transfer the Cohens were relying upon the advice of the attorneys handling the deal—Ben S. Fisher (radio attorney) and Robert H. Davison (R. 236-237).

Unauthorized Purchase of Stock in the Name of Arde Bulova.

On July 12, 1937 at Lafount's request Arde Bulova loaned Crockwell $5,000 on a six months' note underwritten by Lafount and received 200 shares of B stock as security. Six months after the note fell due Bulova foreclosed, and the 200 shares of B stock were sold at auction for $100. In July 1938 Sanford Cohen left on a vacation. Knowing a sale was going to be held, he told Lafount that he would buy the

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stock. Lafount instructed Davison to purchase the stock for Sanford Cohen. Because of some legal technicality which Davison though would delay the transfer if the stock were sold to one other than the pledgee, Davison purchased the stock in Bulova's name on July 28, 1938. When Sanford Cohen returned from California in September, he found the stock had been bought in Bulova's name. The cleanest way to clear title was to have Bulova make a simple assignment of the stock to Cohen so as to show the actual facts. Lafount had advanced the $100 for the purchase and was repaid by Sanford Cohen. Cohen was at all times the owner of the stock (R. 35-36, 137-139, 230-231, 267-270, 402). The purchase in Bulova's name was a mistake; Bulova was greatly annoyed when he discovered that the stock had been bought in his name, because he was not the purchaser and was not interested in the station. Bulova never considered that he had an investment in WORL (R. 203-204, 317, 319-320). This transfer of 200 shares of B stock from Crockwell to Sanford Cohen for a consideration of $100 was reported to the Commission on November 22, 1938. The date of acquisition was given as September 30, 1938, the date when it was assigned by Bulova and issued in Cohen's name (R. 141-142, 204-205, 357, 436).

At the *time the report* was made out *Cohen had paid only $100 for the stock*. The $100 was credited to Crockwell. After the assignment, Cohen advised Bulova that he would attempt to collect the deficiency from Crockwell and that if he did not succeed he would make good to Bulova. No payment was made to Bulova until it became evident that there was no chance to collect from Crockwell. Then Cohen paid Bulova $5,000, the amount of the debt. However, at the time the report was made to the Commission, $100 reflected the actual consideration paid. Sanford Cohen testified that the failure to report the $5,000 might have been an error

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in judgment but the report had been made in good faith (R. 231-232, 268, 270, 319-320).

Transfer of 60% of Voting Stock Reported in 1938.

In report filed with the Commission on November 22, 1938, Harold Lafount was shown as the owner of 400 shares of Class B voting stock, Sanford Cohen the owner of 200 shares, and Robert Nordblom the owner of the remaining 400,—thus indicating that Lafount and Cohen together owned 60% of the voting stock. Although the Commission by this report acquired knowledge that Lafount and Cohen together owned 60% of the voting stock, it did not require that an application for transfer of control of the Corporation be filed (R. 207, 232, 255, 354, 391).

Purchase of Class A Non-Voting Stock.

In March 1939, on the advice of Davison, Lafount bought 900 shares of Class A non-voting preferred stock at auction for $2,450. Through oversight this acquisition was not reported to the Commission on a stock ownership report form until about a year later. Lafount was under the impression that the acquisition had been reported immediately but later found out that it had not. He was shocked when he discovered the omission. As proof of his belief that the acquisition of this stock had been reported, the record shows that, upon an application for construction permit, Lafount's ownership of said 900 shares of Class A stock was set forth (R. 37-38, 98-99, 210-212).

In September 1940, Lafount purchased the remaining 100 shares of A stock from one Endlar for $3,100. This purchase was not reported until April 1941, again through oversight, Lafount being under the impression that it had been reported immediately. The purchase price of the

stock was reported as $3,500., which included $400 legal fees incurred in connection with the purchase (R. 38-39, 208). Lafount's present ownership of all the A stock has been a matter of record with the Commission since April 1941 (R. 354, 391). On July 7, 1942 the Commission granted an application for renewal of license to Station WORL for the period ending August 1, 1944, having full knowledge of this and other reports filed prior thereto.

Purchase of Remaining Interest in B Stock.

In September 1940, besides purchasing Endlar's remaining 100 shares of A stock, Lafount purchased Nordblom's remaining 100 shares of B stock for $1,500. This stock was acquired because there existed a possibility that the corporation would be sold to new interests and in order to do so it was necessary to have possession of all the outstanding stock (R. 140-141). The 100 shares of B stock were purchased from Nordblom for George Cohen at the latter's request. The stock was endorsed in blank by Nordblom and given to George Cohen. The $1,500 paid by Lafount was repaid him almost immediately (R. 245, 280, 285). Shortly after the sale Nordblom expressed dissatisfaction with the deal and stated that he did not want it to go through. He was dissatisfied as to the price and because he understood that the station was to be sold and no sale had taken place. Again George Cohen refused to permit the transfer of the stock in his name and Norblom remained the holder of record. For this reason the transfer was not reported (R. 144, 160-161, 280, 285, 336, 391, 403-404). Nordblom continued to vote the 100 shares as well as the 300 involved in the 1937 transaction. He continued to take an interest in the Corporation, discussed its problems, and attended its meetings. He was glad to remain a stockholder because the station was a tenant of the hotel he ran and it

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was good business for him to watch the progress of the station. *He was also glad to remain because he was dissatisfied with the sale* (R. 335, 340, 342).

Final Settlement of Claims.

The final settlement occurred in November 1943, when Lafount, after consultation with Sanford Cohen, paid Nordblom $750 and received a receipt and general release from

> "all claims * * * not only on account of the purchase of 100 shares of the Class B stock of Broadcasting Service Organization, Inc., but from all other claims arising out of your purchase from me of both Class A and Class B common shares * * *"

The $750 was paid by the Cohens but the release ran to Lafount because he had handled all the negotiations (R. 33-34, 172-173, 350). Though letters written by Nordblom and Davison *prior to the execution of the release* refer to the $750 as being "in full payment for 100 shares," Lafount and Cohen testified that the $750 was to clear up all claims against the 400 shares of B Stock (R. 33-34, 280-281, 406) which is supported by the *receipt and general release* signed by Nordblom referred to above.

The 400 shares of B stock were owned of record by Nordblom until the final settlement of $750 was paid him in November 1943 in final adjustment of all claims (R. 33, 165-166, 281). By this time the Whitwell and other claims had also cleared up. On November 9, 1943 the 100 shares were issued to George Cohen. This was reported on November 15, 1943 (R. 36-37, 146, 439). On November 27, 1943 the remaining 300 shares of B stock standing in Nordblom's name were transferred, 200 shares to Sanford Cohen and

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100 shares to George Cohen and a report of this was filed with the Commission on December 2, 1943. Though $4,500 had been specified as the contract price, $5,000 was reported as the consideration. This was the actual cost to the Cohens at the time the report was made after the various adjustments (R. 34-35, 146, 215-216, 354, 357, 391, 440).

Application for Construction Permit.

In 1937 the licensee filed an application for full time operation of WORL. The application was denied solely on technical grounds of objectionable interference during night time hours. In connection with this proceeding Lafount submitted a balance sheet of the licensee as of April 30, 1937 listing "Cash in Banks $25,362.11." At that time the actual cash in the corporation's bank account was $362.11. Lafount explained that the stockholders actually had the cash available and if the permit had been granted they would have placed the $25,000 in the Corporation's account to pay the cost of construction of the full time operation. The balance sheet was a proposed balance sheet and it should have been so designated. Lafount considered it extremely unfortunate that the accountant who prepared the statement had not included the $25,000 as a liability. He had not intended to infer that the cash stood to the actual credit of the corporation (Docket 4206, 7 F. C. C. Reports 242, 246; R. 298-299, 303, 345-348, 401).

Service Rendered by Station WORL.

When Lafount became President of Broadcasting Service Organization, Inc. in March 1937, the corporation was in bad shape financially. The debts paid off at the closing amounted to $38,000. The station as a whole, including programming, equipment, and accounts receivable, was in very bad shape. As soon as Lafount became President a

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new station manager was hired. Together they succeeded in putting the station on its feet and in furnishing the public with good service. In 1938 the station showed a loss of $11,424, on total receipts of $54,754. In 1943 there was a profit of $25,101 with receipts amounting to $240,468. The Hooper rating rose progressively, putting WORL in a tie for first place during the daytime hours among Boston listeners. All profits were spent to build up the station. Time was regularly donated to at least seventy outstanding national or local organizations as well as to numerous governmental agencies; and the station received the McNinch Award for its outstanding weekly public service programs (R. 351, 353, 374-381, 41, 43-4, 135, 288-296).

Proceedings Subsequent to Hearing.

On October 24, 1945 the Commission adopted a Proposed Decision denying the WORL renewal application. The Proposed Decision held that a transfer of control of respondent had occurred March 25, 1937 without Commission consent, as required by Section 310 of The Communications Act and the Rules adopted pursuant thereto, and also found that respondent had submitted false reports and testimony to the Commission concerning this transfer of control and other matters. The Proposed Decision concluded that the WORL renewal application should be denied because respondent could not be entrusted with the responsibilities of a licensee (R. 475-502).

On November 26, 1945, respondent filed Exceptions to the Proposed Decision accompanied by a Memorandum Brief (R. 503-538). On January 24, 1946, the Commission heard oral argument on its Proposed Decision.

On August 26, 1946, respondent and Bitner Broadcasting Company, a corporation having no present broadcast interests or connection with respondent, filed joint application

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requestion Commission consent under Section 310(b) of The Communications Act for transfer of control of respondent from its present stockholders to Bitner Broadcasting Company for a total consideration of $200,000 (R. 606-607).

On April 23, 1947, the Commission released its Decision adopted April 21, 1947, denying the application for renewal of license of Station WORL and dismissing as moot the pending application for transfer of control of respondent from its present stockholders to Bitner Broadcasting Company. A dissenting opinion was simultaneously issued by E. K. Jett, Commissioner. The dissenting opinion points out that on its facts this case differs from that in *WOKO, Inc.* v. *Federal Communications Commission* (329 U. S. 223), and concludes that since the parties are not guilty of having made false statements and concealments designed to mislead the Commission, the pending applications for renewal of license and for transfer of control of respondent should be granted (R. 565-568).

On May 13, 1947, respondent filed a petition for rehearing pursuant to Section 405 of The Communications Act (R. 569-597). On July 28, 1947, the Commission issued an order setting the petition for rehearing for oral argument which was held October 8, 1947 (R. 598-599). On October 15, 1947, the Commission adopted a Memorandum Opinion and Order simply stating that "After careful consideration of our Decision and Order of April 21, 1947 and the record on which they are based, we have concluded that no sufficient reason has been advanced for departure therefrom * * *". No decision was made on respondent's request in its petition for rehearing for an opportunity at a further hearing to present testimony on the character and integrity of its principals and no decision was made on respondent's contention that dismissal as moot without hearing of the application for transfer of control to Bitner Broadcasting

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Company contravenes Section 309(a) of the Act (R. 600-601). E. K. Jett, Commissioner, simultaneously issued an opinion dissenting from the October 15, 1947 Opinion and Order, in substantially the same language as his dissenting opinion on the April 21, 1947 Decision (R. 602-605).

Respondent has continued to operate Station WORL since the expiration of its last regular license August 1, 1944, by virtue of extensions of temporary license granted by the Commission from time to time.

Reasons for Denying the Writ

1. The petitioner urges that the *WORL* case raises legal issues identical to those decided in *Federal Communications Commission* v. *WOKO, Inc.*, 329 U. S. 223, and therefore "the supervisory jurisdiction of this Court must be exercised in order to vindicate the precedential effect" of this Court's rulings. Respondent's position is that the legal issues in this case are completely different from the issues decided in the *WOKO* case; that the decision of the court below is in conformity with established principles of administrative law; that no new or novel question of importance is presented; and, therefore, there are no special and important reasons for grant of the writ. As hereinafter shown, there is not the slightest justification for any assertion of need to invoke the supervisory jurisdiction of this Court over the court below because of the decision.

It is apparent from a study of the *WOKO* decision that the question presented was whether *admitted concealment* from the Commission of stock ownership for purposes of deception supports a conclusion that the licensee cannot be entrusted to continue its operations in the public interest, convenience, and necessity. In the instant case, the question presented is quite different—to wit, *whether there is sub-*

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stantial evidence to support findings of fact of misrepresentation and concealment of stock ownership, expressly denied by the licensee and its principals, and not controverted by other witnesses, which will support a conclusion that the licensee cannot be entrusted to continue its operation in the public interest, convenience, and necessity. The distinction between the cases is far from putative—it is fundamental, as the decision of the court below points out in detail (R. 615-617). Only the most superficial comparison could result in the erroneous conclusion that the cases involve "slightly variant factual patterns" but "raise legal issues identical to those already authoritatively decided".

Pages 15-19 of the petition cite a list of authorities to support the proposition that a "course of admitted falsifications and concealments, either entirely unexplained or explained by testimony demonstrably unworthy of belief", is sufficient basis from which to draw an inference of wilfulness. Respondent does not take issue with this proposition or with the authorities cited in support thereof. Respondent does, however, take sharp issue with any contention that in this case the record reflects a "course of admitted falsifications and concealments, entirely unexplained or explained by testimony demonstrably unworthy of belief". As indicated above, nowhere in the record is there admission of falsifications and concealments. On the contrary, the record is replete with uncontradicted evidence of good faith on the part of the respondent and its principals, professional men of high standing and good reputation. Any omissions or deficiencies which occurred are fully explained.

As the court below points out, one of the fundamental defects of the Commission decision is that it bases inference upon inference (R. 618). It finds that there have been certain omissions by the licensee from which

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it infers (without evidence) that these omissions were deliberate misrepresentations and concealments, from which it concludes that respondent does not possess the character to continue as the licensee. The fallacy of this reasoning is the complete absence of evidence of wilful misrepresentation or concealment. Bad character cannot reasonably and logically be concluded from failure or delay in the filing of certain reports, particularly when all of the witnesses specifically disavow any intention to conceal or misrepresent and nothing in the record indicates a purpose or object in misrepresentation or concealment.

The opinion of the majority of the Commission (R. 561) admits that "the purpose which may have led the principals in this case to conceal the full extent of the various stock transactions is not entirely clear", and then attempts to justify the Commission's action on the ground that the alleged misrepresentations were willful, of which there is not a scintilla of proof. Commissioner Jett in his dissent correctly stated that the record *does not support the finding* that *any of the parties* are guilty of having made willful misrepresentations (R. 566-567). Evidently, the Court of Appeals likewise concluded—as its opinion shows—that the record *does not support the finding* on which is based the decision to deny the respondent's application for renewal of license, and to deprive the owners of the Corporation of an investment valued at, at least, $200,000.00.

The *Labor Board* and other cases cited on pages 15 and 17 of the petition establish (1) that administrative orders supported by substantial evidence are conclusive on appeal and (2) that administrative agencies may draw reasoned inferences from such findings of fact. The authorities cited do not, however, hold that where, as here, the findings of fact are not supported by substantial evidence, they shall be conclusive on appeal, nor do they hold that unreasonable

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inferences or inference upon inference may be drawn from the facts of record. Substantial evidence is evidence of quality; it must have rational probative force and be adequate to support a conclusion in the mind of a reasonable man. *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197; *National Labor Relations Board* v. *A. S. Abell Co.,* 97 F. 2d 951. Substantial evidence is "more than a scintilla and must do more than create a suspicion of the existence of a fact to be established". *National Labor Relations Board* v. *Columbian Enameling And Stamping Co., Inc.,* 306 U. S. 292, 300. Under the system of law guaranteed by the Constitution, the subsidiary facts must be reached from the evidence and the ultimate facts from the subsidiary facts, not arbitrarily or by assumption or conjecture or by a process contrary to reason, but according to reason. Although inferences are to be drawn by the agency and not by the court, the inferences must necessarily be reasoned inferences. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines,* 303 U. S. 261, 271. To make an essential finding without supporting evidence is arbitrary action, since a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. *Chicago Junction* case, 264 U. S. 258. See also *Baltimore & Ohio Railroad Company* v. *U. S.,* 5 F. Supp. 929; *Bowit Teller & Co.* v. *Commissioner of Internal Revenue,* 53 F. 2d 381 cert. den. 284 U. S. 690; *National Labor Relations Board* v. *Sheboygan Chair Co.,* 125 F. 2d 436. In short, there must be a reasonable exercise of administrative discretion having a logical relationship to the facts, which is not the case here. The conclusions of the Commission as to wilfulness and intent to mislead, not having been fairly arrived at, and not being supported by substantial evidence, can "justly be said to be palpably wrong and therefore arbitrary." *Leach* v. *Carlisle,* 258 U. S. 138, 140.

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2. Petitioner complains that the decision of the court below recognizes the good public service record and increased financial stability of WORL, whereas this Court in the *WOKO* case rejected the contention that the Commission must take cognizance of the public service record of a station notwithstanding that concealment and misrepresentation had been admitted. The fact is that the court below recognized the ruling of the *WOKO* case that if there is concealment, materiality of such concealment is irrelevant (R. 614, 616). What the court below said on the public service record of WORL is as follows (R. 617-618):

> "In the view of the majority of this court, the record amply supports appellant's protestations of good faith. True, the record is replete with evidence that appellant's agents were careless and inaccurate and, perhaps, lacking in good judgment as to the reports required by the Commission, but none of these characteristics in themselves imply bad faith and it is equally certain and of record that none of these characteristics were projected over to and affected the management and conduct of appellant's business as a radio broadcasting licensee. In fact, appellant's outstanding public service record and its progressively increasing financial stability—both matters of record in this case—expressly negative any such projection."

In petitioner's effort to establish that the court below ignored the decision of this Court in the *WOKO* case, it has distorted the language of the opinion. The statement in that opinion that there are no harmful consequences to the Commission or to the public interest because of respondent's improper reports, is made only in connection with disproval of the poor analogy between this case and criminal

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or tort cases in which intent may be imputed upon a showing of heedlessness of the foreseeable harmful consequences (R. 618).

In Paragraph 13 of the conclusions of its decision denying the WORL renewal of license, the Commission made specific findings on alleged violation of Section 310(b) of the Act by respondent, although the denial is predicated upon alleged misrepresentations and concealments rather than violation of Section 310(b) (R. 563). In view of the conclusions of Paragraph 13, it was entirely proper for the court below to advert to the Commission action of July 7 1942, granting an application for renewal of the WORL license with full knowledge that Lafount and Sanford Cohen had acquired control of the licensee corporation (R. 618-619). This action by the Commission is cited by the court not as a bar to denial of the pending renewal application but rather as an indication of the arbitrariness of the Commission's refusal to renew. The court below specifically held as follows (R. 619):

> "We wish it clearly understood that we are not ruling that, once forgiven, a licensee should always thereafter be forgiven for irregularity in compliance with statute or with rule or regulation. The fallacy of such a rule is obvious. Nor are we ruling that a licensee can with impunity disregard or disobey statute, rule, or regulation. Further, we do not question the power of the Commission, within statutory bounds, to adopt and administer a stricter policy of enforcement of its rules and regulations with regard to revocation or renewal of broadcasting licenses. But the Commission, and this court on review, must constantly be guided by the prevailing purpose of the Communications Act in ascertaining the result in each case which will best serve the

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public interest. In such a determination there is no place for the arbitrary application of pointless technicality *unsupported by substantial evidence.* We hold, therefore, that, *as to this particular case,* taking into consideration all of the circumstances discussed above the Commission's decision of April 21, 1947, was improper as a matter of law and *lacked the support of substantial evidence* and was the result of arbitrary and capricious action by the Commission. Accordingly, pursuant to Section 402 (e) of the Act, the decision of the Commission is reversed and the case remanded to the Commission to carry out the judgment of this court." (Emphasis supplied.)

In reversing the Commission, the court below properly used its judgment on the questions of law raised in the appeal. *S. E. C.* v. *Chenery Corp.,* 318 U. S. 80, 94. It did not substitute its own findings of fact for those of the Commission but held that the findings of the Commission do not rationally support its conclusions as to wilfulness. The court stated that upon independent search, it was unable to find "any single specific portion of the voluminous record before us which would justify the Commission's conclusion of wilfulness" (R. 616). There can be no doubt that determination by the court below under Section 402(e) of the sufficiency of the findings of fact to support the conclusions of law is a proper exercise of the judicial function. *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.,* 289 U. S. 266; *Saginaw Broadcasting Co.* v. *Federal Communications Commission,* 96 F. 2d 554 cert. den. 305 U. S. 613. The Court's decision is not concerned with the wisdom or the expediency of the Commission action, but is directed entirely to consideration whether substantial evidence supports the findings and conclusions drawn, and considera-

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tion of the improper application by the majority of the Commission of the rule of law in the *WOKO* case to the facts of record in this case.[1]

3. Apparently recognizing the necessity of strengthening his doubtful contentions on the similarity of the *WOKO* and *WORL* cases, the petitioner urges as a further ground for grant of certiorari that the court below, which plays "so vital a role in the review of administrative action" is in need of "supervision by this Court" because of its persistent departure from accepted legal principles and substitution of its views for those of administrative agencies. This unwarranted and unjustified attack on the court below, a court long and widely recognized for its competence and experience in administrative law, requires some comment.

Table I of the Appendix to this Brief shows that in the two year period from January 1, 1947, to January 1, 1949, there have been eighty-five petitions filed for writs of certiorari to the court below. Sixty-eight of these petitions have been denied, and one dismissed. At least twenty-six of the sixty-eight petitions denied involved review by the court below of administrative action. In the sixteen cases in which certiorari was granted, six have been affirmed, six have been reversed, and four await decision. Of the twelve cases decided by this Court, six involve review of administrative action, three being affirmed and three reversed. Thus, a total of thirty-two cases involving review of administrative action on which petitions for certiorari

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1 Respondent urged on the court below that the Commission violated Section 309 (a) of the Communications Act in denying a hearing on its application for transfer of control of the licensee corporation to Bitner Broadcasting Company. The court held that in view of its reversal of the decision on other grounds, "it is unnecessary to make a decision at this time" on this contention (R. 619).

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to the court below have been filed, only three resulted in reversal of the decision of the Court of Appeals.

Moreover, only one of the three cases of reversal on review of administrative action involves a determination whether substantial evidence supports administrative findings of fact. *Donaldson* v. *Read Magazine,* 333 U. S. 178, Justices Burton and Douglas, dissenting. The court below has repeatedly given full recognition to the well established rule of law that administrative findings of fact, if based on substantial evidence, are binding on appeal. For instance, in granting enforcement of an order of the National Labor Relations Board, the court recognized that the Board's findings were supported by substantial evidence and further recognized that the court cannot weigh evidence or resolve contradictions in it, if that evidence supporting each conclusion is substantial. *E. Anthony and Sons, Inc.* v. *National Labor Relations Board,* 163 F. 2d 22, cert. den. 332 U. S. 773. In a recent case in which question as to completeness of an administrative record on appeal was raised, the court below carefully enunciated its duties and responsibilities in reviewing orders of administrative agencies and said that "thus restricted and simplified, the function of the court is simply to see if the Commission's factual findings are supported by substantial evidence". *Norris & Hirshberg, Inc.* v. *Securities and Exchange Commission,* 163 F. 2d 689, cert. den. 333 U. S. 867. See also *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission,* 169 F. 2d 881, cert. den. 332 U. S. 762, 93 L. Ed. 39; *Hurley* v. *Lowe, Deputy Commr., Bureau of Employees' Compensation,* 168 F. 2d 553, cert. den. 334 U. S. 828; *Fields* v. *Hannegan, Postmaster,* 162 F. 2d 17, cert. den. 332 U. S. 773; *Brown Investment Co.* v. *Warner, Register of Copyrights,* 161 F. 2d 910, cert. den. 332 U. S. 801.

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Of the six cases of reversal of the court below cited on Page 21 of the petition, all pose difficult questions of administrative law in the main without precedent. It must be remembered that because of its location at the seat of government, the court below is frequently called upon to decide administrative issues of first impression. Of the six cases cited, only *Donaldson* v. *Read Magazine, supra,* and *Liberty Mutual Insurance Co. v. Cardillo,* 330 U. S. 469 raised issues of support by substantial evidence of administrative determinations. These two cases must be compared with the several more recent cases above reaffirming the principle of finality of administrative action when based on substantial evidence.

It seems clear from the foregoing analysis and cases that, nothwithstanding the ill-advised protestations to the contrary in the Brief of the Petitioner, there is no persistent "trend in the court below" to depart from accepted principles of judicial review and substitute its views for those of administrative agencies.[2] On the contrary, the recent record of the court below on review of the actions of adminis-

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2 In *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 US 206, cited on page 21 of petitioner's brief, this Court said that "we do not ordinarily grant certiorari to review judgments based solely on questions of fact". This Court also pointed out that it granted certiorari because of the earnest contention of the Board that this was one of a series of decisions in which the court below (CCA Fifth) had unwarrantedly interfered with the exclusive jurisdiction granted the Board by Congress. The Court of Appeals for the District of Columbia Circuit has evidenced no such trend toward unwarranted interference with the exclusive jurisdiction granted the Commission by Congress. Besides the cases cited in footnote 4, broadcast decisions of the Commission which have recently been affirmed by the court below include *Simmons* v. *Federal Communications Commission* (App. D. C.) No. 9607, decided May 24, 1948, cert. den. 93 L. Ed. 35, and *Mansfield Journal Company* v. *Federal Communications Commission* (App. D. C.) No. 9817, decided March 7, 1949.

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trative agencies is an enviable one by any objective standard.[3]

The petitioner does not amplify the very general assertion of his petition that "the rationale of the decision below is such that, if allowed to stand, the exercise by administrative agencies generally of powers virtually identical to that here claimed by the Commission will be brought into serious question". It is difficult to see how the instant decision, confined as it is to the particular facts of record, can undermine the well established principle as to conclusiveness of administrative findings of fact *when supported by substantial evidence.*[4] The decision specifically recognizes the prior ruling of the court that it is immaterial that evidence before the Commission is susceptible of other conclusions than those drawn by the Commission and that, assuming the presence of substantial evidence, the court will not

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3 Recent cases determining varied questions of administrative law in which decisions of the court below have been affirmed by this Court include *Hannegan* v. *Esquire, Inc.*, 327 US 146; *Clark* v. *Uebersee Finanz-Korporation*, A. G. 332 US 484; *Hilton* v. *Sullivan*, 334 US 323; *Ahrens* v. *Clark*, 335 US 188.

4 It is to be noted that less than a month after its WORL decision, the court below, in affirming a Commission decision preferring one applicant for a new station over another, reaffirmed the ruling of *Black River Valley Broadcasts* v. *McNinch*, 101 F. 2d 235, citing *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*, 289 US 266 that the Commission's "findings, under the law, must be maintained if they are not arbitrary and capricious or erroneous in law, and are based upon substantial evidence". *Bay State Beacon, Inc.* v. *Federal Communications Commission* (App. D. C.), No. 9766, decided December 20, 1948. Moreover, on February 14, 1949, the court below rendered a per curiam opinion in a case argued February 11, 1949 affirming an order of the Commission denying renewal of license of Station WJBW, New Orleans, La. because of violations by the licensee Carlson of the Rules and Regulations. The opinion reads in whole as follows: "We find no error in the record. The decision of the Federal Communications Commission is therefore affirmed". *Carlson* v. *Federal Communications Commission* (App. D. C.), No. 9987, February 14, 1949. A petition for writ of certiorari in the *Carlson* case is being filed April 1, 1949.

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substitute its judgment for that of the Commission. *Yankee Network, Inc.* v. *Federal Communications Commission,* 107 F. 2d 212 (R. 612). Likewise, the decision concedes that where concealment is involved, the question of materiality *vel non* of the facts concealed has been put to rest by the decision of the Supreme Court in the *WOKO* case (R. 616). In effect, the rationale of the decision below is simply that administrative findings of fact and conclusions which are not supported by substantial evidence are arbitrary and capricious and, therefore subject to reversal. This principle of law is as sound and well established as the principle that findings of fact and conclusions when supported by substantial evidence are conclusive. *Crowell* v. *Benson,* 285 U. S. 22; *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197; *National Labor Relations Board* v. *Columbian Enameling And Stamping Co., Inc.,* 306 U. S. 292.

4. From the foregoing it is manifest that the decision below does not overstep the legitimate bounds of the judicial function. It does not limit the Commission's power to deny broadcast applications, either for renewal of license or for construction permits, when such denial conforms to the requirement of Section 402(e) of the Communications Act that the findings of fact and conclusions be supported by substantial evidence. The decision does not announce any new or novel standard to determine whether conclusions of law reached by the Commission are arbitrary and capricious, but simply reaffirms settled principles governing judicial review of administrative action. In deciding that, on the facts of this case, the rule of the *WOKO* decision is inapplicable, and that the Commission acted arbitrarily, capriciously, and unreasonably in refusing to renew the WORL license where there was not substantial evidence to

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support its findings of fact of wilful misrepresentation, concealment, and deception, the court below did not render a decision of such importance or of such general effect as to require or justify issuance of a writ of certiorari.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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March 31, 1949.

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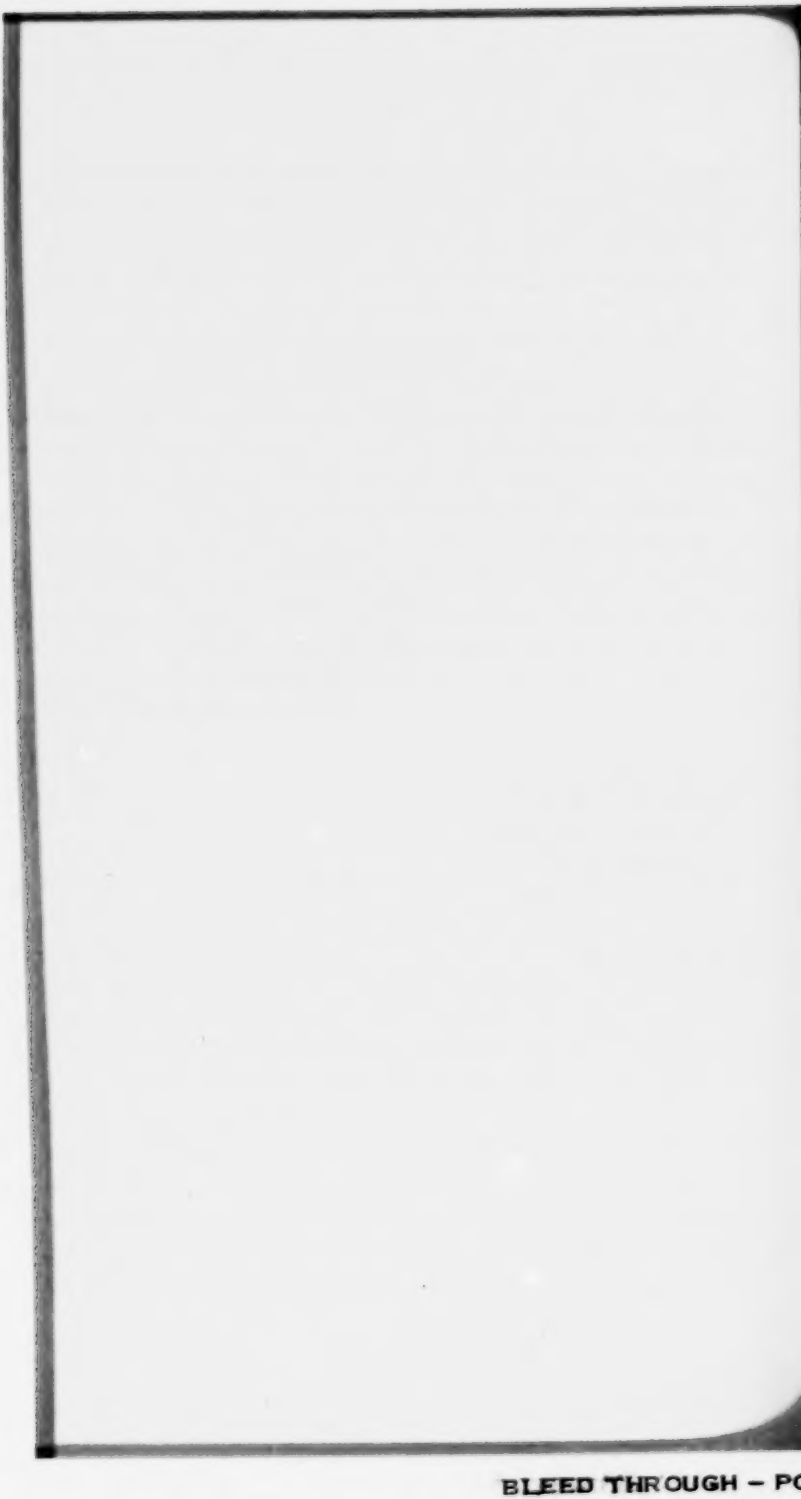

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APPENDIX

TABLE I

Petitions for Writ of Certiorari to The United States Court of Appeals For District of Columbia Circuit
Filed January 1, 1947 to January 1, 1949

(NOTE: Cases marked with asterisks involve administrative agencies)

A. PETITIONS DENIED

Case	No.	Date Filed	Denied
Buckner et al v. Tweed	910	1/18/47	330 US 825
*Friedman v. Swellenbach	990	2/6/47	330 US 838
DMW Contracting v. Stolz	1002	2/10/47	330 US 839
*Pepco v. P. U. C. D. C.	1038	2/17/47	331 US 816
Kinnison v. U. S.	899	1/17/47	330 US 834
Hasson v. U. S.	1013	2/10/47	331 US 808
*Garrett v. D. C.	1014	2/11/47	330 US 835
Thomas v. U. S.	1034	2/15/47	331 US 822
T. Higgins v. U. S.	1079	2/28/47	331 US 822
Hawkins et al v. U. S.	1097	3/4/47	331 US 830
*U. S. v. P. U. C.	1135	3/17/47	331 US 816
Hensley v. U. S.	1138	3/18/47	331 US 817
B. Higgins v. U. S.	1177	3/28/47	331 US 840
*Young v. Anderson	1194	4/3/47	331 US 824
Curley v. U. S.	1211	4/5/47	331 US 837
Smith v. U. S.	1235	4/11/47	331 US 837
*Jones & Laughlin v. United Mine Workers	1236	4/12/47	331 US 828
Case v. Government	1250	4/15/47	331 US 826
Mellen v. Hirsch	1322	5/5/47	331 US 845
Giddings v. Zellan	1490	6/1/47	332 US 759
*D. C. v. Johnson & Wimsatt	1504	6/18/47	332 US 760
*D. C. v. H. D. Lee Co.	1505	6/18/47	332 US 760

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Case	No.	Date Filed	Denied
*Panhandle Eastern Pipe Lines v. F. P. C.	147	6/24/47	332 US 762
Boone v. Boone	204	7/10/47	332 US 766
*Fields v. Hannegan	284	8/20/47	332 US 773
*Brown Instrument Co. v. Warner	304	8/27/47	332 US 801
*Anthony & Sons v. N. L. R. B.	286	8/21/47	332 US 773
Burns v. Spiller	305	8/29/47	332 US 792
Pelley v. Matthews	350	9/16/47	332 US 811
*Beckham v. D. C.	417	10/27/47	332 US 825
Field v. U. S.	458	11/26/47	332 US 851
*Young Spring & Wire v. N. L. R. B.	502	12/29/47	333 US 837
*Norris & Hirshberg v. S. E. C.	524	1/12/48	333 US 867
*Philadelphia Co. v. S. E. C.	480	12/17/47	333 US 828
Gately v. Hariton	488	12/22/47	333 US 838
Fook v. U. S.	519	1/7/48	333 US 838
Wheeler v. U. S.	300 misc.	1/12/48	333 US 829
Capital Transit v. Grimes	573	2/4/48	333 US 845
Patton v. U. S.	327 misc.	1/26/48	333 US 830
Griffin v. U. S.	276 misc.	1/6/48	333 US 857
Spruill v. Campbell	304 misc.	1/15/48	333 US 864
*Edgerton v. Ooms	305	8/29/47	333 US 874
*Hurley v. Lowe	751	4/19/48	334 US 828
Ritchie v. Drier	466 misc.	4/22/48	334 US 860
Gray v. U. S.	554 misc.	6/3/48	334 US 853
Solis v. Clemmer	511 misc.	5/13/48	334 US 860
U. S. v. Davis	420 misc.	4/24/48	334 US 849
Holloway v. U. S. et al	536 misc.	5/24/48	334 US 852
Hall v. U. S.	553 misc.	6/3/48	334 US 853
Romney v. U. S.	753	4/20/48	334 US 847
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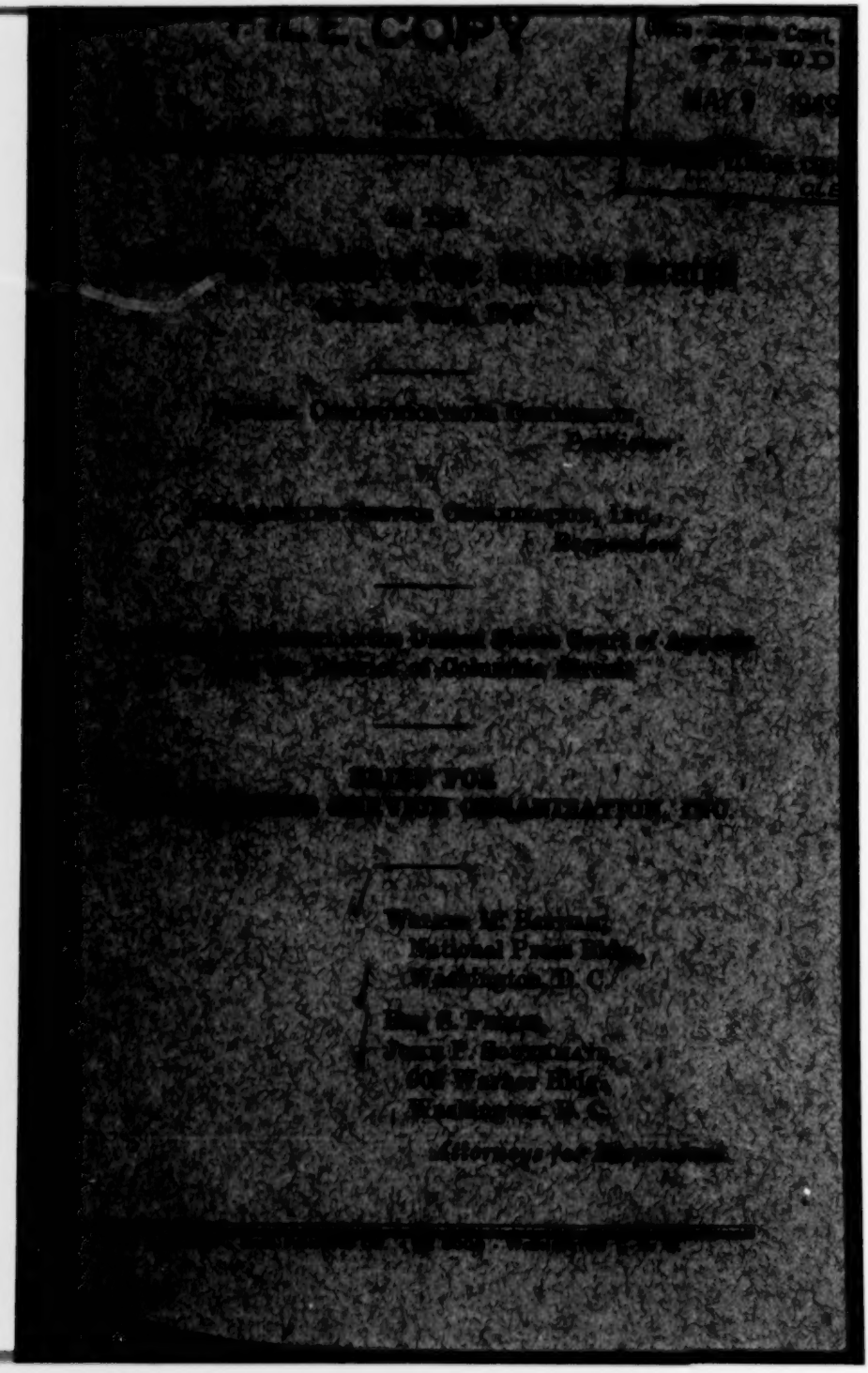

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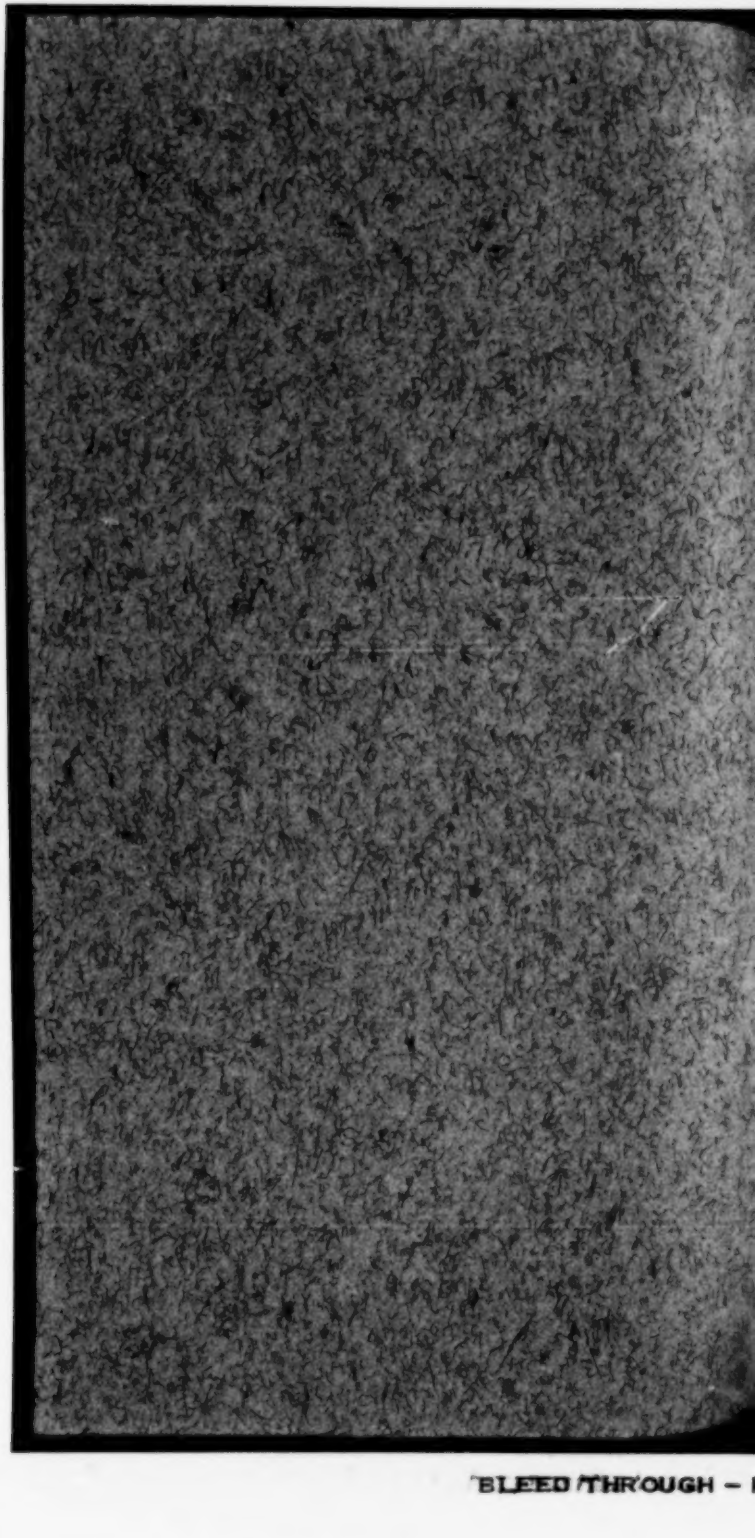

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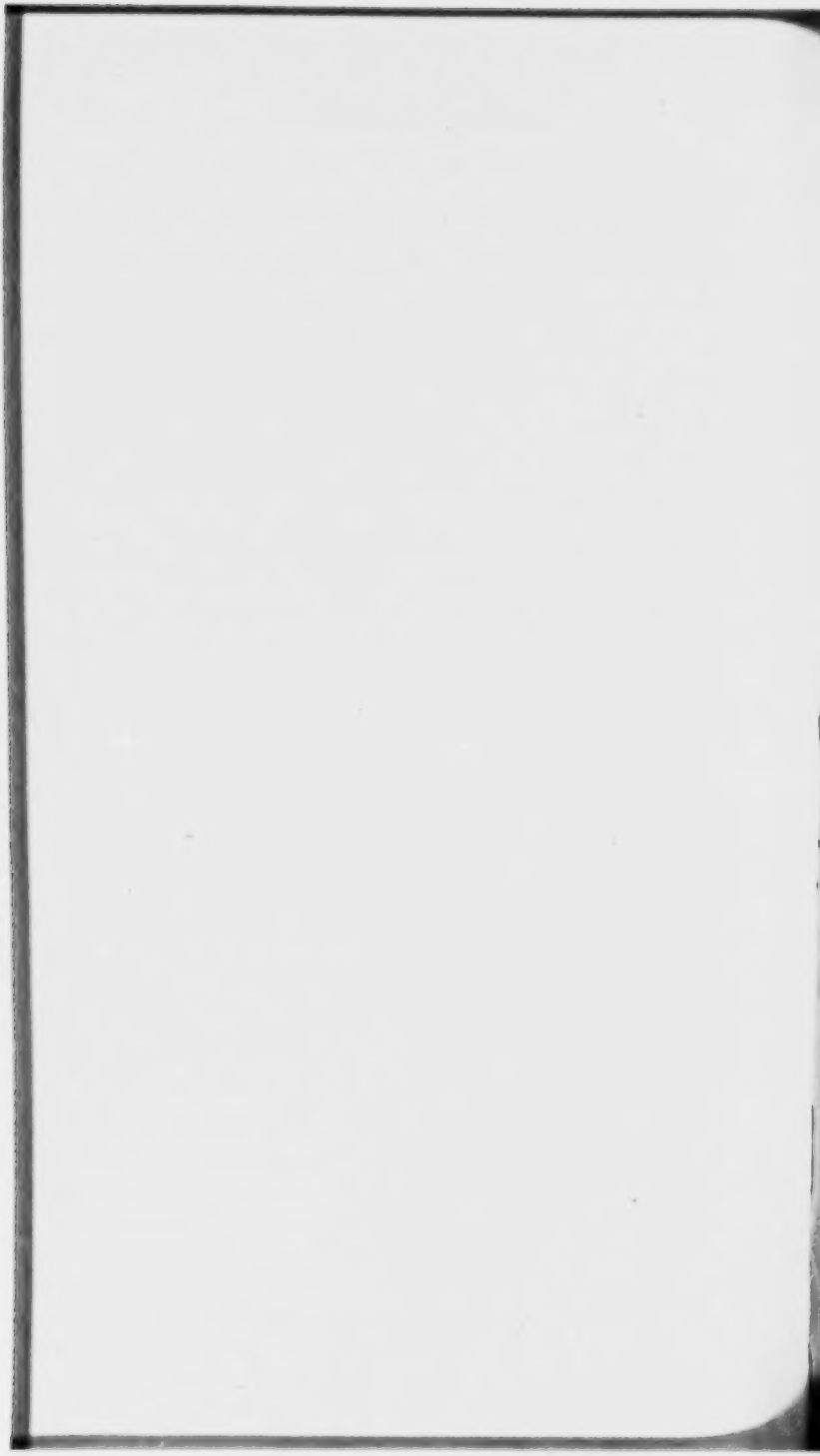

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IN THE

Supreme Court of the United States

October Term, 1948

No. 584

FEDERAL COMMUNICATIONS COMMISSION,
Petitioner,

v.

BROADCASTING SERVICE ORGANIZATION, INC.,
Respondent

On Writ of Certiorari to the United States Court of Appeals For the District of Columbia Circuit

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BRIEF FOR BROADCASTING SERVICE ORGANIZATION, INC.

OPINIONS BELOW

The Decision and Order of the Federal Communications Commission (R. 539-568, 600-601) have not yet been reported. The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 608-620) has not yet been reported.

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JURISDICTION

The judgment of the Court of Appeals was entered on November 24, 1948 (R. 620-621). Certiorari was requested by the government on February 28, 1949, and was granted on April 18, 1949 in an order transferring the case to the summary docket (R. 623). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the Court below erred in holding that, as a matter of law, the Federal Communications Commission is not empowered by the provisions of the Communications Act of 1934, as amended, and the Decision of this Court in the *WOKO* case (329 U. S. 223) to deny the application for renewal of license of Station WORL on the ground that respondent does not possess the character to be entrusted with the responsibilities of a licensee, there being no substantial evidence to support the findings and conclusions of the Commission with respect thereto.

STATUTE AND RULES INVOLVED

The pertinent provisions of the Communications Act of 1934, 48 Stat. 1064, as amended, 47 U. S. C. 151, *et seq*, the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. 1000) and the Rules and Regulations of the Federal Communications Commission are set forth in appendix A to this brief.

STATEMENT OF CASE

Broadcasting Service Organization, Inc. has been the licensee of Station WORL, which operates in Boston, Massachusetts on 950kc., with 1 KW, daytime only, since November 20, 1931. That it has been and is rendering a

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meritorious program service in the public interest, convience or necessity is established by the record and not questioned by the Commission (R. 288-296).

On May 27, 1944, respondent filed an application pursuant to Section 308 (a) of The Communications Act of 1934, as amended, for renewal of its station license. On June 13, 1944, this application was designated for hearing.* Hearings were held September 22 and 23, October 18, and December 5, 1944, in Washington, D. C., and on November 20, 1944, in New York, N. Y., before P. W. Seward, Esq., the presiding officer designated by the Commission. The hearing record contains the facts hereinafter set forth, which are uncontroverted except where it is expressly stated that the testimony is conflicting.

Present Organization of Respondent

Broadcasting Service Organization, Inc., is a Massachusetts corporation with outstanding capital stock consisting of 1000 shares of non-voting Class A preferred and 1000

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* The hearing issues were:

1. To determine who are the present owners of the stock of the applicant corporation, and when and from whom said stock was acquired.
2. To determine whether the license granted to the applicant corporation, or the rights or responsibilities incident thereto, have been in any manner, either directly or indirectly, transferred, assigned, or disposed of without the consent of the Commission, as provided by the Communications Act of 1934, as amended, and particularly Section 310(b) thereof.
3. To determine whether the statements and representations made in the various applications, documents, and reports filed with the Commission on behalf of the applicant, by its officers, directors, and/or agents, have fully and accurately reflected the facts concerning the ownership and distribution of the stock of the company.
4. To determine whether the applicant's officers, directors, stockholders, and/or agents, or either of them, have made false statements and representations to the Commission as to the ownership, transfer, and/or control of the stock of the applicant.
5. To determine whether all contracts and agreements which have been entered into by applicant's officers, directors, stockholders and/or agents, relative to the sale and transfer of the stock of the applicant corporation, have been reported to the Commission as required by Section 43.1 of the Rules and Regulations.
6. To determine whether in view of the facts adduced under the foregoing issues, public interest, convenience, or necessity would be served by granting the instant application.

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shares of voting common designated as Class B. Since November 1943 the officers, directors and stockholders have been:

Name	Office	A Stock	B Stock (Voting)
Harold A. Lafount	Director-President	1000	400
Sanford H. Cohen	Director	—	400
George Cohen	Treasurer	—	200
Robert E. Davison	Director-Clerk (Secretary)	—	—

(R. 235, 355, 391)

All are citizens of the United States and possess the qualifications required of officers, directors, and stockholders of a licensee corporation. In 1927, after a successful business career, Harold A. Lafount was appointed a member of the Federal Radio Commission. He left the Commission in 1934 and since then has been employed as General Manager of all the radio interests of Mr. Arde Bulova (R. 21-23, 305). Sanford H. Cohen, a former Assistant United States Attorney, and George Cohen are brothers who have been associated in the practice of law in New York City since 1920. They have served as legal counsel to Mr. Bulova and to the Bulova Watch Company for about twenty-five years. Robert H. Davison of Boston is an attorney-at-law of highest reputation (R. 26, 27, 83, 225-27, 279, 305-6).

The 1937 Agreements

Prior to March 25, 1937 the stock of Broadcasting Service Organization, Inc. was distributed as follows:

Name	A Stock	B Stock
George A. Crockwell	400	200
James K. Phelan	300	150
William H. Eynon	300	150
Robert C. Nordblom	—	500*

(R. 354, 386)

* Mr. Nordblom acquired his 500 shares of B stock on July 29, 1936 and became President and Director of the corporation at that time (R.

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At that time Station WORL had been steadily losing money. The stockholders therefore decided that a sale of the stock was essential in order to provide new funds for the corporation (R. 62, 322). About March 1, 1937 George A. Crockwell telephoned Harold A. Lafount with reference to the possible sale of stock in the corporation (R. 24, 54). Lafount discussed the proposal with Arde Bulova. Mr. Bulova was not interested in obtaining an interest in WORL but had no objection to Lafount and the Cohens making such a move. Lafount thereupon proceeded to negotiate with Crockwell on his own behalf. An understanding was reached between them when Lafount agreed to purchase 400 shares of Class B stock for $48,000. Crockwell subsequently advised Lafount that an additional 300 shares of voting stock had become available. When Lafount told the Cohens of the possibility of their acquiring this stock, they authorized Lafount to negotiate on their behalf (R. 26, 58, 63, 83, 227-8, 245, 278-280, 309-10).

On March 16, 1937 an agreement was signed by Crockwell, Nordblom, Phelan and Eynon. Following a recital that Crockwell and Nordblom were about to enter into a contract with Lafount for the sale of 700 shares of B stock for $52,500, Eynon and Phelan each agreed to sell Crockwell 150 shares of B stock and 300 shares of A stock for a total consideration of $2,500 apiece. Crockwell and Nordblom agreed to apply the $52,500 to the discharge of this $5,000 and of all corporate obligations (except certain obligations as specified in the agreement with Lafount) and distribute the balance then remaining 62½% to Crockwell and 37½% to Nordblom. Crockwell, Eynon, and Phelan agreed to resign as officers, directors and employees of the corporation (R. 382). Lafount had nothing to do with this agreement and was not even aware of its existence (R. 57-8, 67, 71).

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322). 200 of these 500 shares were purchased from Crockwell (R. 330). Early in August 1936 the licensee reported to the Commission Mr. Nordblom's acquisition of a 50% interest in the Class B voting stock. The Commission did not require that an application be filed for transfer of control of the corporation to Nordblom (R. 354, 391).

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On the same day, March 16, 1937, Crockwell, Nordblom, and Lafount entered into an agreement providing for the transfer of 400 shares of B stock (300 to be supplied by Crockwell and 100 by Nordblom) to Lafount for a consideration of $48,000. Crockwell and Nordblom undertook to pay all the debts of the corporation existing on March 25, 1937 (with certain exceptions) from the proceeds of the sale, to reduce the liquidating value and the annual dividends of the preferred stock, and to cause certain changes in the by-laws of the corporation. The closing was set for March 25, 1937 (R. 385).

On March 25, Crockwell, Nordblom, Phelan, Eynon, Lafount, and Ben S. Fisher, attorney for Lafount and the Cohens, met at the office of Robert H. Davison, attorney for the licensee and its stockholders. An escrow agreement was entered into between Crockwell, Nordblom, Lafount, and Davison providing that $48,000 was to be paid to Davison as escrow agent to pay off the debts of the corporation, the balance to be distributed 62½% to Crockwell and 37½% to Nordblom (R. 74, 75, 80, 81, 393). The Cohens not being present at the closing, Ben S. Fisher, as Agent, entered into an agreement with Nordblom whereby he agreed to purchase 300 shares of Class B stock for $4,500 (R. 396). A cashier's check in the amount of $52,500 was delivered by Lafount to Davison in payment for the 400 shares purchased by Lafount and the 300 shares purchased by the Cohens (R. 82-83). Temporary certificates were issued, one to Lafount for 400 shares and one to Nordblom for 300 shares. The latter was endorsed by Nordblom in blank and delivered to Lafount. The temporary certificate for 300 shares was issued in Nordblom's name because Lafount did not know at that time how the Cohens wanted their 300 shares apportioned between them (R. 106, 109, 115, 116). No arrangement was made at the closing as to how the permanent certificates were to be issued (R. 104). Though all the agreements were closed simultaneously, Lafount at all

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times considered his purchase of the 400 shares and the Cohens' purchase of 300 shares as separate transactions. They were two distinct purchases negotiated separately and based on separate contracts (R. 62-3, 76, 77, 83, 120, 172-3, 333).

Lafount's acquisition of 400 shares of Class B stock was reported to the Commission on March 31, 1937 (R. 399). Of the $48,000 Lafount paid for his 400 shares of B stock, $38,000 was used to pay off the existing debts of the corporation. The Cohens had agreed with Lafount that they would pay their share of the debts and that the cost of the 700 shares should be divided on a per share basis to equalize the purchase price, Lafount's cost being $30,000 and the Cohens' $22,500 (J. App. 27, 76, 150, 151, 228, 243). For this reason the "Amount Actually Paid for Stock" by Lafount was reported as $30,000 (R. 112, 399). The consideration for the 600 shares of Class A stock acquired by Crockwell was reported as $26,400, the par value of $44 per share. The report of March 31, 1937 was prepared by Davison, Crockwell's attorney. At the time it was filed Lafount had no detailed knowledge of the arrangements among Crockwell, Nordblom, Eynon, and Phelan for the settlement of the value of the A stock among themselves (R. 56, 66, 74, 399).

Claims Made Against the Stock

Shortly after the closing date Crockwell started complaining to Lafount about the deal. He called frequently on Lafount, telling him that he wished to get the station back. He stated that Nordblom was dissatisfied too and something had to be done about it (R. 30 - 31, 103, 117, 155-157). Crockwell discussed his dissatisfaction with Nordblom and with many others. The subject was also considered at a number of directors' meetings (R. 332-333, 335-336, 339, 340). Though Crockwell was telling Lafount that Nordblom was dissatisfied, the latter never

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made any complaints or claims and testified that he never was dissatisfied with the transaction (R. 110, 327). The evidence is conflicting as to whether Nordblom ever expressed any dissatisfaction to Lafount. However, there is no question that Crockwell led Lafount to believe that both he and Nordblom were very displeased with the whole deal. Furthermore, it is clear that shortly after the March 1937 closing a dispute had arisen between Crockwell and Nordblom which continued over a considerable period of time (R. 110, 117-118, 155-158, 362). As all the negotiations leading up to the March 25, 1937 closing had been conducted with Crockwell, and as he had made all the complaints, Lafount attempted to straighten things out with him rather than with Nordblom whom he hardly knew (R. 30-31, 57-58, 117).

These complaints were received before Lafount had ascertained how the Cohens wished to have their 300 shares divided. When Lafount advised the Cohens of Crockwell's complaints, *they refused to permit the permanent certificates for the 300 shares to be issued in their names until all dissatisfaction had been ironed out and no further claims against the stock were outstanding* (R. 34-35, 109, 121, 143, 175-176, 228-229, 250). Pending the settlement of the differences a permanent certificate was issued in the same form as the temporary one. Nordblom endorsed it in blank, and on April 30, 1937 it was sent to Lafount. Nordblom testified that he did not recall why he permitted the stock to remain in his name but believed it was a matter of convenience to the buyers. He was glad, however, to remain a voting stockholder with 400 shares because the station was a tenant of the hotel he ran and it was good business for him to watch its progress (R. 32, 340, 342).

Early in 1939, before any settlement had been reached with Crockwell, both Davison and Crockwell advised Lafount that a Miss Natalie Whitwell claimed to own all

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the stock of the corporation (R. 31, 176, 222, 252, 333, 339-340, 359-360). On July 21, 1941 Hines, counsel for Miss Whitwell, wrote Lafount demanding that all the outstanding stock of the corporation be turned over to his client (R. 261-262, 361). In January 1942 Miss Whitwell brought a suit at law against the corporation in Massachusetts. The court held for the defendants (R. 31, 177-178, 229-230, 261-263). Hines wrote the Commission a series of letters beginning in June 1939 and ending in September 1941 in which he advised the F. C. C. of the Whitwell claims and complained about the ownership of WORL. As late as December 15, 1943, Hines, in testimony before a Congressional Committee, asserted claims against the corporation on behalf of Miss Whitwell (Hearings Before Select Committee to Investigate F. C. C., Volume 39, pp. 5017-29, 78th Congress, December 15, 1943; R. 254).

Acts of Ownership

The permanent stock certificate for 300 shares, endorsed in blank by Nordblom, was turned over to Sanford H. Cohen by Lafount immediately upon its receipt and remained in the Cohens' possession thereafter (R. 30, 121, 228, 280). The Cohens could have sold the stock or had it put in their name because the certificate was negotiable (R. 248, 250). However, the Cohens never voted the 300 shares of B stock. While it stood in Nordblom's name they never attended directors' meetings or stockholders' meetings. No dividends were ever paid on the stock (R. 263). Nordblom voted the stock at all times. In fact, he voted 400 shares of B stock at ten stockholders' and directors' meetings from March 5, 1937 up to and including April 16, 1943. There existed no arrangement or understanding governing the stock or the manner in which it should be voted (R. 123-126, 219, 265, 329, 335, 342, 364-373).

Reasons for Not Reporting the Acquisition

Thus the B stock continued to be owned of record, 400 shares by Lafount, 400 by Nordblom, and 200 by Crock-

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well (R. 33). Both Lafount and the Cohens believed that as there had been no transfer on the books of the corporation, and as Nordblom remained the record holder of the 300 shares, it was proper for the applicant to report Nordblom as the holder of the stock. They did not think that the status of the stock had changed in any way as the certificates were still in Nordblom's name. They felt that any transfer to their names would be unwise at that time for they might wish to rescind the sale and ask for the return of their money. *In their minds the sale remained unconsummated and the deal had not been closed.* The evidence is clear that if the principals made a mistake of judgment, they did not make it in bad faith. (R. 34, 112, 115-116, 117, 120, 223, 143, 175-176, 228-229, 250-252, 254, 280, 284). *Similarly, Lafount and the Cohens believed that in view of the circumstances and the uncertainty concerning the final transfer of the 300 shares of B stock to the Cohens it was unnecessary under Section 310(b) of the Act to apply for a transfer of control of the corporation. They did not think there had been a transfer of control within the meaning of the law* (R. 119, 120, 173-174, 254-255). Sanford Cohen was not admitted to practice before the Commission in 1937—his admission occurred in 1940. Commission records show that George Cohen has never been admitted to practice before the Commission. There is no evidence indicating that in 1937 either of the Cohens was familiar with the Rules and Regulations of the Commission. It is fair to infer—as was in fact the case—that in failing to report the transfer the Cohens were relying upon the advice of the attorneys handling the deal—Ben S. Fisher (radio attorney) and Robert H. Davison (R. 236-237).

Unauthorized Purchase of Stock in the Name of Arde Bulova

On July 12, 1937 at Lafount's request Arde Bulova loaned Crockwell $5,000 on a six months' note under-

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written by Lafount and received 200 shares of B stock as security. Six months after the note fell due Bulova foreclosed, and the 200 shares of B stock were sold at auction for $100. In July 1938 Sanford Cohen left on a vacation. Knowing a sale was going to be held, he told Lafount that he would buy the stock. Lafount instructed Davison to purchase the stock for Sanford Cohen. Because of some legal technicality which Davison thought would delay the transfer if the stock were sold to one other than the pledgee, Davison purchased the stock in Bulova's name on July 28, 1938. When Sanford Cohen returned from California in September, he found the stock had been bought in Bulova's name. The cleanest way to clear title was to have Bulova make a simple assignment of the stock to Cohen so as to show the actual facts. Lafount had advanced the $100 for the purchase and was repaid by Sanford Cohen. Cohen was at all times the owner of the stock (R. 35-36, 137-139, 230-231, 267-270, 402). The purchase in Bulova's name was a mistake on the part of Davison; Bulova was greatly annoyed when he discovered that the stock had been bought in his name, because he was not the purchaser and was not interested in the station. Bulova never considered that he had an investment in WORL (R. 203-204, 317, 319-320). This transfer of 200 shares of B stock from Crockwell to Sanford Cohen for a consideration of $100 was reported to the Commission on November 22, 1938. The date of acquisition was given as September 30, 1938, the date when it was assigned by Bulova and issued in Cohen's name (R. 141-142, 204-205, 357, 436).

At the time the report was made out Cohen had paid only $100 for the stock. The $100 was credited to Crockwell. After the assignment, Cohen advised Bulova that he would attempt to collect the deficiency from Crockwell and that if he did not succeed he would make good to Bulova. No payment was made to Bulova until it became evident that there was no chance to collect from Crock-

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well. Then Cohen paid Bulova $5,000, the amount of the debt. However, at the time the report was made to the Commission, $100 reflected the actual consideration paid. Sanford Cohen testified that the failure to report the $5,000 might have been an error in judgment but the report had been made in good faith (R. 231-232, 268, 270, 319-320). In fact, the report accurately stated the situation.

Transfer of 60% of Voting Stock Reported in 1938

In the report filed with the Commission on November 22, 1938, Harold Lafount was shown as the owner of 400 shares of Class B voting stock, Sanford Cohen the owner of 200 shares, and Robert Nordblom the owner of the remaining 400,—thus indicating that Lafount and Cohen together owned 60% of the voting stock. The Commission did not require that an application for transfer of control of the corporation be filed (R. 207, 232, 255, 354, 391).

Purchases of Class A Non-Voting Stock

In March 1939, on the advice of Davison, Lafount bought 900 shares of Class A non-voting preferred stock at auction for $2,450. Through oversight this acquisition was not reported to the Commission until about a year later. Lafount was under the impression that the acquisition had been reported immediately but later found out that it had not. He was shocked when he discovered the omission (R. 37-38, 98-99, 210-212).

In September 1940, Lafount purchased the remaining 100 shares of A stock from one Endlar for $3,100. This purchase was not reported until April 1941, again through oversight, Lafount being under the impression that it had been reported immediately. The purchase price of the stock was reported as $3,500, which included $400 legal fees incurred in connection with the purchase (R. 38-39, 208). Lafount's present ownership of all the A stock has been

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a matter of record with the Commission since April 1941 (R. 354, 391).*

Purchase of Remaining Interest in B Stock

In September 1940, besides purchasing Endlar's remaining 100 shares of A stock, Lafount purchased Nordblom's remaining 100 shares of B stock for $1,500. This stock was acquired because there existed a possibility that the corporation would be sold to new interests and in order to do so it was necessary to have possession of all the outstanding stock (R. 140-141). The 100 shares of B stock were purchased from Nordblom for George Cohen at the latter's request. The stock was endorsed in blank by Nordblom and given to George Cohen. The $1,500 paid by Lafount was repaid him almost immediately (R. 245, 280, 285). Shortly after the sale Nordblom expressed dissatisfaction with the deal and stated that he did not want it to go through. He was dissatisfied as to the price and because he understood that the station was to be sold and no sale had taken place. Again George Cohen refused to permit the transfer of the stock to his name and Nordblom remained the holder of record. For this reason the transfer was not reported (R. 144, 160-161, 280, 285, 336, 391, 403-404). Nordblom continued to vote the 100 shares as well as the 300 involved in the 1937 transaction. He continued to take an interest in the corporation, discussed its problems, and attended its meetings. He was glad to remain a stockholder because the station was a tenant of the hotel he ran and it was good

* Petitioner's brief states that this 100 shares of Class A stock was transferred from Crockwell to Endlar on June 29, 1938, and that no report of the name of the transferor, the date of the transfer, or consideration paid was filed. The fact is that the Endlar ownership of the 100 shares was reported to the Commission on form 728 July 14, 1938, less than one month after his acquisition of the stock (R. 355). Nothing of record shows that respondent had knowledge of the consideration paid Crockwell by Endlar for these shares. The prompt filing of a report concerning the change in ownership clearly negatives the petitioner's suggestion of concealment or inordinate delay.

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business for him to watch the progress of the station. He was also glad to remain because he was dissatisfied with the sale (R. 335, 340, 342).

Final Settlement of Claims

The final settlement occurred in November, 1943, when Lafount, after consultation with Sanford Cohen, paid Nordblom $750 and received a receipt and general release from

> "all claims . . . not only on account of the purchase of 100 shares of the Class B stock of Broadcasting Service Organization, Inc., but from all other claims arising out of your purchase from me of both Class A and Class B common shares. . . ."

The $750 was paid by the Cohens but the release ran to Lafount because he had handled all the negotiations (R. 33-34, 172-173, 350). Though letters written by Nordblom and Davison prior to the execution of the release refer to the $750 as being "in full payment for 100 shares", Lafount and Cohen testified that the $750 was to clear up all claims against the 400 shares of B stock (R. 33-34, 280-281, 406). This is supported by the receipt and general release signed by Nordblom referred to above.

The 400 shares of B stock were owned of record by Nordblom until the final settlement of $750 was paid him in November 1943 in final adjustment of all claims (R. 33, 165-166, 281). By this time the Whitwell and other claims had also cleared up. On November 9, 1943 the 100 shares were issued to George Cohen. This was reported on November 15, 1943 (R. 36-37, 146, 439). On November 27, 1943 the remaining 300 shares of B stock standing in Nordblom's name were transferred, 200 shares to Sanford Cohen and 100 shares to George Cohen and a report of this was was filed with the Commission on December 2, 1943. Though $4,500 had been specified as the contract price, $5,000 was reported as the consideration. This was the actual cost to the Cohens at the time the report was

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made after the various adjustments (R. 34-35, 146, 215-216, 354, 357, 391, 440).

Application for Construction Permit

In 1937 the licensee filed an application for full time operation of WORL. The application was denied solely on technical grounds of objectionable interference during night time hours. In connection with this proceeding Lafount submitted a balance sheet of the licensee as of April 30, 1937 listing "Cash in Banks $25,362.11." At that time the actual cash in the corporation's bank account was $362.11. Lafount explained that the stockholders actually had the cash available and if the permit had been granted they would have placed the $25,000 in the Corporation's account. Zinneman, respondent's accountant, who was called as a witness for and on behalf of the Commission, testified that the balance sheet was a proposed balance sheet and it should have been so designated. He testified that "the balance sheet should have been headed up pro forma balance sheet or proposed balance sheet, and if permission had been given by the F. C. C. for whatever purpose that money would have been used for, that money would have been put up" (R. 303). Lafount considered it extremely unfortunate that the accountant who prepared the statement had not included the $25,000 as a liability. He had not intended to infer that the cash stood to the actual credit of the corporation (Docket 4206, 7 F. C. C. Reports 242, 246; R. 298-299, 303, 345-348, 401).

Service Rendered by Station WORL

When Lafount became President of Broadcasting Service Organization, Inc., in March 1937, the corporation was in bad shape financially. The debts paid off at the closing amounted to $38,000. The station as a whole, including programming, equipment, and accounts receivable, was in very bad shape. As soon as Lafount became President a new station manager was hired. Together they succeeded

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in putting the station on its feet and in furnishing the public with good service. In 1938 the station showed a loss of $11,424 on total receipts of $54,754. In 1943 there was a profit of $25,101 with receipts amounting to $240,468. The Hooper rating rose progressively, putting WORL in a tie for first place during the daytime hours among Boston listeners. All profits were spent to build up the station. Time was regularly donated to at least seventy outstanding national or local organizations as well as to numerous governmental agencies; and the station received the McNinch Award for its outstanding weekly public service programs (R. 351, 353, 374-381, 41, 43-4, 135, 288-296).

Proceedings Subsequent to Hearing

On October 24, 1945 the Commission adopted a Proposed Decision denying the WORL renewal application. The Proposed Decision held that a transfer of control of respondent had occurred March 25, 1937 without Commission consent, as required by Section 310 of The Communications Act and the Rules adopted pursuant thereto, and also found that respondent had submitted false reports and testimony to the Commission concerning this transfer of control and other matters. The Proposed Decision concluded that the WORL renewal application should be denied because respondent could not be entrusted with the responsibilities of a licensee (R. 475-502).

On November 26, 1945, respondent filed Exceptions to the Proposed Decision accompanied by a Memorandum Brief (R. 503-538). On January 24, 1946, the Commission heard oral argument on its Proposed Decision.

On August 26, 1946, respondent and Bitner Broadcasting Company a corporation having no present broadcast interests or connection with respondent, filed joint application requesting Commission consent under Section 310(b) of The Communications Act for transfer of control of respondent from its present stockholders to Bitner

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Broadcasting Company for a total consideration of $200,000. Pursuant to the requirements of Section 1.321 of the Commission's Rules, notice of this application for transfer of control was given by respondent twice a week for three weeks in the Boston Daily Globe from August 28 to September 14, 1946 and simultaneous publication of notice of the proposed transfer was given by the Commission in the Federal Register (R. 606-607).

At no time during the sixty day period provided by Section 1.321 of the Rules or at any time thereafter was any application filed with the Commission by any person or group desiring to acquire the outstanding stock of respondent on the same terms and conditions as set forth in the sale agreement with Bitner Broadcasting Company filed with the application for transfer of control.

On April 23, 1947, the Commission released its Decision adopted April 21, 1947, denying the application for renewal of license of Station WORL and dismissing as moot the pending application for transfer of control of respondent from its present stockholders to Bitner Broadcasting Company. The Decision was by a vote of 3 to 1 with the remaining 3 of the 7 members of the Commission not participating therein. A dissenting opinion was simultaneously issued by E. K. Jett, Commissioner. The dissenting opinion points out that on its facts this case differs from that in *WOKO, Inc.* v. *Federal Communications Commission* (329 U. S. 223), and concludes that since the parties are not guilty of having made false statements and concealments designed to mislead the Commission, the pending applications for renewal of license and for transfer of control of respondent should be granted (R. 565-568).

On May 13, 1947, respondent filed a petition for rehearing pursuant to Section 405 of The Communications Act. In addition to the points raised on appeal, the petition for rehearing alleged that since only 4 out of 7 Commis-

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sioners participated in the April 21, 1947 Decision and since 1 of the 3 Commissioners voting for denial had not participated in the oral argument on the Proposed Decision, leaving less than a quorum of the members of the Commission hearing oral argument who voted on the April 21, 1947 Decision, reargument before the full Commission should be granted (R. 569-597).

On July 28, 1947, the Commission issued an order setting the petition for rehearing for oral argument and ordered that such argument be directed to the findings of fact and conclusions of law of the April 21, 1947 Decision (R. 598, 599). Oral argument on the petition for rehearing was held before the Commission October 8, 1947. On October 15, 1947, the Commission adopted a Memorandum Opinion and Order simply stating that "After careful consideration of our Decision and Order of April 21, 1947 and the record on which they are based, we have concluded that no sufficient reason has been advanced for departure therefrom. . . ." No decision was made on respondent's request in its petition for rehearing for an opportunity at a further hearing to present testimony on the character and integrity of its principals and no decision was made on respondent's contention that dismissal as moot without hearing of the application for transfer of control to Bitner Broadcasting Company contravenes Section 309(a) of the Act (R. 600-601). E. K. Jett, Commissioner, simultaneously issued an opinion dissenting from the October 15, 1947 Opinion and Order, in substantially the same language as his dissenting opinion on the April 21, 1947 Decision (R. 602-605). Rosel Hyde, Commissioner, did not participate in either of the April 21st Decision or the October 15th Memorandum Opinion.

Respondent has continued to operate Station WORL since the expiration of its last regular license August 1, 1944, by virtue of extensions of temporary license granted by the Commission from time to time.

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SUMMARY OF ARGUMENT

1. The Court below properly held that it is arbitrary and capricious for the Commission to conclude that respondent knowingly and wilfully engaged in a continued series of misrepresentations and concealments concerning its stock ownership when the hearing record is barren of any evidence to support such conclusion. Nothing in the record contradicts the testimony of the principals that their actions were in good faith and without intent to deceive the Commission. No possible motive for concealment or misrepresentation is shown by the record. The Commission concedes that "the purpose which may have led the principals in this case to conceal the full extent of the various stock transactions is not entirely clear". Without evidence of a motive, or an affirmative showing of bad faith the Commission cannot reasonably conclude that respondent has wilfully concealed information from it. Legal authority completely supports respondent's position that it acted in good faith and without intent to deceive in not reporting certain stock transactions until clouds on the title of the stock being transferred were later removed. Since the decision is not supported by substantial evidence, the court below was right in reversing and remanding it to the Commission.

2. The court below correctly held that the Commission decision erroneously cites *Federal Communications Commission* v. *WOKO, Inc.*, 329 U. S. 223 as precedent for denial of the WORL renewal application. The two cases are clearly distinguishable on the facts, WOKO involving deliberately and admittedly false reports to the Commission with an established motive for furnishing false information. The Commission has consistently granted renewal applications where full information was not submitted but where, as here, the applicant acted in good faith without intent to deceive. The denial of the WORL renewal application, viewed in the light of Commission

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precedents both before and after the WORL denial, is arbitrary and capricious.

3. There is no evidence in the hearing record to support the findings of the Decision that Harold A. Lafount and the Cohen brothers jointly acquired control of respondent March 25, 1937, and have at all times since acted as partners in the operation of the station. The uncontradicted testimony of the principals clearly negates such a conclusion. Both before and after the March 25, 1937, closing, majority control of respondent passed to new parties and the Commission had been so notified—yet no request was made that application be filed for consent to transfer of corporate control under Section 310 (b) of the Act. The Commission has known since 1938 that Lafount and Sanford Cohen together held 60% of respondent's stock, but did not require a transfer application to be filed. Public records show that the Law Department of the Commission recommended in 1941 that no action be taken against respondent although the facts concerning this stock ownership were known at the time. A renewal of license was granted WORL in 1942 with full notice of the 60% stock ownership of Lafount and Sanford H. Cohen.

4. It is arbitrary and capricious for the Commission to find and conclude that respondent and its principals do not possess the necessary character qualifications for a licensee of a radio station without the character and integrity of respondent having been in issue and without notice of such issue or an opportunity to introduce evidence thereon at a further hearing. A fundamental of a fair administrative hearing is notice and opportunity to be heard. The April 21, 1947 Decision is predicated upon a ground of which no notice was given and consequently no evidence was introduced thereon. Respondent's request, in its Petition for Rehearing, for an opportunity at a further hearing to introduce evidence on the character and integrity of its principals, was arbitrarily ignored by the

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Commission in its Memorandum Opinion and Order of October 15, 1947, reaffirming its April 21st Decision.

5. Respondent had before the Commission a bona fide application for transfer of corporate control of the licensee from its present stockholders to Bitner Broadcasting Company for a total consideration of $200,000. Section 309 (a) of The Communications Act provides that the Commission shall either grant pending applications or designate them for hearing. Nothing in the Act, express or implied, authorizes the Commission to summarily dismiss as moot a bona fide application for a station license or transfer thereof. The Commission exceeded its statutory authority, its own rules, and the constitutional guarantees of the 14th Amendment, in failing to either grant or designate for hearing the application to transfer control of respondent to Bitner Broadcasting Company.

6. The Commission acted arbitrarily and capriciously in ignoring in its Decision the evidence in the record concerning the meritorious program service of Station WORL and the extent to which the present operation of the station serves the public interest, convenience and necessity of the Boston area. It is conceded that this factor alone should not be controlling in passing on the renewal application. But in the present state of the record, with no evidence of bad faith by respondent in its relationships with the Commission, the extent to which respondent is meeting the statutory standard of service in the public interest, convenience and necessity should have been weighed in determining whether to grant a renewal of license for Station WORL.

7. Petitioner's brief is based upon the assumption, not justified by the record, that respondent engaged in a course of concealment and deception; that its actions were taken with a *reckless and wilful disregard* of its duties to the Commission; and therefore respondent does not possess the character to continue operating the station. The fact

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is that there is no evidence of concealment or misrepresentation, nor of intent to conceal or misrepresent, nor of recklessness or wilful disregard of its duties as a licensee. Those elements may not be established in the manner which petitioner attempts — by piling inference upon inference. The Commission decision is based only on the alleged concealments and deceptions of respondent, with no findings or conclusions as to reckless and wilful disregard of its duties as a licensee. Petitioner on appeal is therefore attempting to inject into the case a ground for denial of the renewal which is without support in the decision from which appeal is taken. The authorities and arguments set forth in petitioner's brief are not controlling or in point on the facts of record.

ARGUMENT *

I

The Court Below Properly Held That It Is Arbitrary and Capricious for the Commission to Find and Conclude That Respondent Engaged in Misrepresentations and Concealments, or Submitted False Reports and Testimony, Without Substantial Evidence to Support Such Findings and Conclusions. The Uncontradicted Testimony by Respondent Is That Its Actions Were in Good Faith Without Intent to Deceive. That Respondent Was Governed by the Considerations Set Forth In Its Testimony Is Supported by Legal Authority and by the Fact No Possible Motive for Concealment Is Established or No Affirmative Evidence of Bad Faith Is Shown.

* Wherever reference is made herein to matter in petitioner's brief, the page number is not given because petitioner has not been able to furnish respondent with printed copy of its brief in the short time at its disposal.

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A. That Respondent or Its Principals Engaged in Misrepresentations and Concealments or Submitted False Reports and Testimony Is Not Supported by Substantial Evidence or by Legal Authority.

Section 402(e) of the Communications Act of 1934, as amended, provides that findings of fact by the Commission, *if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious.* (Emphasis supplied.) The court below found that the findings of fact and conclusions of the April 21 Decision of the Commission are not supported by substantial evidence, and are therefore arbitrary and capricious, insofar as it is found and concluded that respondent or its principals knowingly and wilfully engaged in a continued series of misrepresentations and concealments, or a planned program of deception concerning its stock ownership, or submitted false reports and testimony to the Commission.

Concealment necessarily involves purposeful or deliberate non-disclosure calculated and designed to prevent discovery of material facts. It implies deceit and fraud. A necessary element of imsrepresentation is moral delinquency, consisting of a guilty knowledge and consequent intention to deceive. The very essence of the legal conception of misrepresentation is the fraudulent intention flowing from the guilty knowledge. *Mason* v. *Moore*, 76 N. E. 932, 936, 73 Ohio Stats. 275. Likewise the term "false" denotes intentional, deliberate and wilful untruth—something beyond mere inaccuracy. *Heindel* v. *United States*, 150 F. (2d) 493, 497 (C. C. A. 6th, 1945); *Schapiro et al* v. *Tweedie Footwear Corporation*, 131 F. (2d) 876, 878 (C. C. A. 3rd, 1942). A false statement is a statement made in bad faith with intent to deceive; the facts recited must be untrue and the person reciting them must know them to be untrue. *Moulor* v. *American Life Insurance Company*, 111 U. S. 335, 345 (1884). None of these elements is established by the record.

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1. The respondent acted in good faith

The record is undisputed that respondent believed the reports and affidavits it filed with The Commission were true. Paragraphs 4 and 5 of the Conclusions and the brief of petitioner maintain that over a period of six years following March 25, 1937, respondent filed a number of reports and applications giving false information as to its ownership. But the record shows, that when making these various reports, respondent considered that the information included therein was truthful. It was not trying to conceal information. The number of reports filed is of no conquence since there was no intent to deceive when each was filed. The sworn testimony of the three principals of respondent—Lafount and the Cohens—that their actions were in good faith and without intention to deceive the Commission stands uncontradicted. There is no conclusion but one of good faith, though perhaps mistaken judgment, which can reasonably be drawn from the hearing record. This is recognized by the decision of the court below (R. 617-618).

Moreover, there is ample legal authority to support the conclusion that the principals of respondent were justified in believing that the reports being filed were true. Inasmuch as the Cohens are practicing attorneys in New York, and respondent is a Massachusetts corporation, particular reference is made to New York and Massachusetts authorities.

When the Cohens were advised of Crockwell's claim that Nordblom had raised objections to the 1937 sale, they refused to consider the purchase as having been consummated. They refused to assert ownership and would not allow the permanent certificates to be issued in their name. It is fundamental that execution of a contract depends on the intent of the parties, and the Cohens did not believe the transfer of stock had been completed at that time. *Bellows et al.* v. *McKenzie et al.*, 212 Mass. 601, 99 N. E.

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470 (1912); *Frazier* v. *Simmons et al.*, 139 Mass. 531, 2 N. E. 112 (1885).

Whether title to personal property has been transferred must be determined in accordance with the intention of the parties as shown by reasonable construction of their language and conduct. *Barrows* v. *Fuller et al.*, 253 Mass. 79, 148 N. E. 374 (1925); *Caines* v. *Sawyer et al.*, 248 Mass. 368, 143 N. E. 326 (1924).

> ". . . An agreement that property shall remain in the name of the seller is not essentially different in legal effect from an agreement that title should not pass from him." *Murray* v. *Indursky*, 266 Mass. 220, 223, 165 N. E. 91 (1929).

Thus where personal property is registered and insured in the seller's name and he retains the right to use it, legal title remains in the seller though the property is in the buyer's possession. *Hyland* v. *Hyland*, 278 Mass. 112, 179 N. E. 612 (1932).

In the instant case the Cohens had refused to accept ownership of the stock because of the defects in title; therefore title never passed to them. *Brogan et al.* v. *Warran Wallace & Co.*, 235 App. Div. 388, 257 N. Y. Supp. 200 (1932); *Ryder & Brown Co.* v. *E. Lissberger Co.*, 300 Mass. 438, 15 N. E. (2d) 441 (1938). The mere fact that they had physical possession of the stock certificates endorsed in blank does not establish ownership, especially when all the prerogatives of ownership were exercised by Nordblom, the holder of record. *Titus* v. *Wallick*, 222 App. Div. 17, 225 N. Y. Supp. 263 (1927); *Richards* v. *Wells Fargo Express Co. et al.*, 156 App. Div. 268, 141 N. Y. Supp. 306 (1913); *Schildkraut* v. *Light et al.*, 56 N. Y. S. (2d) 758, 761, rev'd on other grounds 269 App. Div. 990, 58 N. Y. S. (2d) 324 (1945).

On the contrary, the failure to affix stock transfer stamps to the certificate (R. 397) raises the presumption that no transfer of title was intended. Mass. Gen. L. Ch. 64,

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Sec. 1; *Waddle* v. *Cabana*, 220 N. Y. 18, 114 N. E. 1054 (1917); *In re Douglas' Estate*, 169 Misc. 425, 7 N. Y. S. (2d) 870 (1938). Furthermore, the transfer was unenforceable and proof thereof could not be offered or received in evidence in any Massachusetts court. Mass. Gen. L., Ch. 64, Sec. 8.

In refusing to accept full title the Cohens were merely taking justifiable precautions to protect their rights. Had they considered themselves owners of the stock, they would not only have left themselves open to possible law suits but would also have forfeited their valuable right to rescind the purchase contract.

A buyer of stock who is given cause to believe that he may have reason to rescind the purchase may not avail himself of the benefits thereof, nor may he exercise any rights of ownership over the stock, or he will be deemed to have ratified and affirmed the sale and will be deprived of his right to rescind. Mass. Gen. L., Ch. 155, Sec. 33; *McKinley* v. *Warren*, 218 Mass. 310, 105 N. E. 990 (1914); *R. A. Jones and Co., Inc.* v. *Green Bros.*, 289 Mass. 50, 193 N. E. 582 (1935). If, after hearing of Crockwell's contenition that Nordblom was dissatisfied, the Cohens had permitted a transfer of the stock upon the books of the Corporation, or the filing of a report with the Commission showing them to be owners, this would have constituted an assertion of ownership which would be considered a ratification of the sale. *McNulty* v. *Whitney et al.*, 273 Mass. 494, 174 N. E. 121 (1930); *Bassett* v. *Brown*, 105 Mass. 551 (1870); *cf. Fortier et al.* v. *Monat et al.*, 286 Mass. 335, 190 N. E. 530 (1934). Thus the course of action adopted by the Cohens was justified as necessary to protect their rights.

Petitioner in its brief, in discussing the refusal of the Cohens to accept title, makes much of the claim that the certificate for the stock was endorsed in blank and admittedly available for immediate surrender and issuance of a

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new certificate made out in the buyers' name and was transferable at the buyers' will. The important fact is not what could have been done by either party but what was actually done, to wit, the Cohens refused to take title, refused to be the owners of the said stock until all the defects were cleared up. Therefore, what the Cohens could have done is not involved in this case. The language of Judge Gray of the New York Court of Appeals in the case of *Lawrence* v. *Fox,* 20 New York 268, at page 274 aptly covers the situation:

> "It was also insisted that Holly could have discharged the defendant from his promise, though it was intended by both parties for the benefit of the plaintiff, and therefore the plaintiff was not entitled to maintain this suit for the recovery of a demand over which he had no control. It is enough that the plaintiff did not release the defendant from his promise, and whether he could or not is a question not now necessarily involved; . . ."

Sanford Cohen's purchase of 200 shares of B stock at auction in 1938 was perfectly consistent. He was a purchaser in good faith for value and had not received notice of any facts making the transfer wrongful. Miss Whitwell did not file any complaints until 1939 — after the stock had been issued in Sanford Cohen's name. Sanford Cohen had therefore received an indefeasible right to the certificate and the shares represented thereby. Mass. Gen. L., Ch. 155, Secs. 31, 33, 34; *Levovsky* v. *Horvitz,* 307 Mass. 475, 30 N. E. (2d) 411 (1940).

2. The corporation was entitled to consider Nordblom as the owner of the stock

The Cohens, not considering themselves the owners of the stock, refused to permit its transfer on the books of the Corporation. Under these circumstances the licensee was justified in considering and in treating Nordblom as the owner of all the stock standing in his name.

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The Massachusetts laws provide that the person to whom a certificate is issued is deemed to be the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, ". . . until and unless he endorses the certificate of another *specified* person." Mass. Gen. L. Ch. 155, Sec. 44. Furthermore, the corporation is entitled to recognize the exclusive right of a person registered on its books as the owner of the shares for all purposes: to receive dividends, to vote, and to be held liable for calls and assessments. Mass. Gen. L., Ch. 155, Sec. 29. *Lane* v. *Volunteer Co-Operative Bank, Boston,* 307 Mass. 508, 512, 30 N. E. (2d) 821 (1940); *Stuart et al.* v. *Sargent,* 283 Mass. 536, 186 N. E. 349 (1933); *Fall River National Bank* v. *Estes,* 279 Mass. 380, 181 N. E. 242 (1932).

Therefore, until there had been a transfer of the stock on the books of the Corporation, or until the stock had been specifically endorsed to the Cohens, the respondent was entitled to consider and treat Nordblom as the owner of the stock in question. This is what in fact occurred; for during the period that the stock stood in Nordblom's name every corporate duty and liability was shouldered by him. In performing these tasks he acted independently at all times. The Cohens never had any voice in the affairs of the licensee nor did they participate in its management. They were never consulted on policy nor did they ever instruct Nordblom how he was to act. In fact they had never met Nordblom until the hearings in this case (R. 329).

3. The purchase of stock in the name of Bulova was not authorized or effective

Davison had been instructed to purchase the 200 B shares being sold at auction for Sanford Cohen. Instead, he purchased the stock in the name of Arde Bulova. Bulova did not know of the purchase until after it had

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been completed. Davison's act was completely unauthorized. Therefore, Bulova was not the purchaser of the stock unless he chose to ratify the purchase. *James F. Monaghan, Inc.* v. *M. Lowenstein & Sons, Inc.*, 290 Mass. 331, 195 N. E. 101 (1935); *DeBlois et al.* v. *Boylston & Tremont Corp. et al.*, 281 Mass. 498, 183 N. E. 823 (1933).

This Bulova refused to do. Instead, he assigned the stock to Sanford Cohen. This did not constitute a ratification of the purchase in his name; he received no benefit by reason of the agent's unauthorized act beyond what he would have received if the agent had acted in accordance with his instructions, for he was merely effecting the transaction contemplated by the parties. *Kidder* v. *Greenman et al.*, 283 Mass. 601, 187 N. E. 42 (1933); *Glen* v. *Garth et al.*, 133 N. Y. 18, 30 N. E. 649 (1892) app. dis. 147 U. S. 360 (1893).

Furthermore, Bulova, by assigning the stock to Sanford Cohen, was doing only what a court would otherwise have required of him. *Boudrot* v. *Cole et al.*, 285 Mass. 353, 189 N. E. 59 (1934); *cf. St. Georges Church* v. *Primitive Methodist Church et al.*, 315 Mass. 202, 52 N. E. (2d) 401 (1943).

B. Without Evidence of a Motive or a Purpose to Be Served, or an Affirmative Showing of Bad Faith, It Cannot Reasonably Be Concluded That Respondent Engaged in Misrepresentation and Deception or Furnished False Reports and Testimony.

In its April 21 Decision, the Commission concluded that respondent and its principals knowingly misrepresented stock ownership and "submitted false reports and testimony in order to convey such impressions as it deemed expedient" yet it also concedes that "the purpose which may have led the principals in this case to conceal the full extent of the various stock transactions is not entirely clear . . .". The fact is that nothing in the record indi-

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cates a motive for deception because there was no deception. As so clearly stated by Commissioner E. K. Jett in his dissent from the April 21 Decision:

> "The majority, while 'not entirely clear' in regard to the purpose which led the principals of WORL to withhold information concerning the full extent of the various stock transactions, nevertheless believe that the Supreme Court ruling in the WOKO case would not excuse willful misrepresentations to the Commission. As I have pointed out, the motive for concealment was clearly established in the WOKO case, while no motive was established in the WORL case. Therefore, I do not feel that the record against WORL supports the finding that any of the parties are guilty of having made willful misrepresentations to the Commission."

Sections 308(b), 310(a), 311, and 313 of the Communications Act of 1934, set forth in Appendix A of this brief, enumerate the statutory qualifications of a broadcast licensee. Respondent and its principals meet all of these statutory qualifications. Lafount and the Cohens had nothing to hide from the Commission. Their business associates all were informed of the various stock transactions. Moreover, the Commission by 1938 had been notified that Lafount and Sanford Cohen together owned 60% of the stock of respondent.

Commission records show that in 1937 it was a comparatively simple procedure to obtain Commission consent, pursuant to Section 310(b) of the Act, to a transfer of Corporate control to bona fide persons. Cf. *In re Powel Crosley, Jr., Transferor* and *The Aviation Corporation, Transferee*, Docket 6767, decided December 6, 1945, 3 Pike & Fischer Radio Regulations, 6, 17. There the Commission held that it could not deny a transfer of control to persons meeting the statutory qualifications without revising "17 years of precedent and establishing new policies". The notice and publication procedure (Section 1.321 of the Rules) for competing bids on assignment of licenses and

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transfers of corporate control was not adopted until late in 1945. Thus there could be no intent to conceal stock ownership either because of any personal disqualification of the principals or because a report of the stock ownership might involve the filing of formal application for consent to transfer control. Nothing in the record suggests any other reason for the wilful or deliberate withholding of information from the Commission, nor is there evidence of bad faith on the part of respondent or its principals.

In the absence of any showing of motive or of any facts implying a motive or reason to deceive, or a showing of bad faith in dealing with the Commission, it cannot reasonably be concluded that there was a wilful or deliberate attempt by respondent to conceal information or misrepresent facts. It is arbitrary and capricious for the Commission to conclude that there has been concealment and deception *without first establishing a reason for such action.* Surely it cannot be maintained that there was concealment and deception for the sake of concealment and deception. The well known rule of law that intent is a necessary element of a fraud may properly be applied to this case. How can respondent or its principals be held guilty of fraud and deception on the Commission when no intent to deceive has been established?

C. Since the Decision Is Not Supported by Substantial Evidence, It Was Properly Reversed and Remanded to the Commission by the Court Below.

Section 10(e) of the Administrative Procedure Act, like Section 402(e) of the Communications Act, empowers the Court reviewing administrative action to hold unlawful and set aside agency action, findings, and conclusions, found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or unsupported by substantial evidence.

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Substantial evidence is evidence of quality; it must have rational probative force and be adequate to support a conclusion in the mind of a reasonable man. In short, the rules of logic and reasoning which are necessary to the accomplishment of the type of adjudication guaranteed by our system of law must be applied by the Commission, as by any trier of fact, in reaching its decision. *Consolidated Edison Company* v. *National Labor Relations Board,* 305 U. S. 197 (1938); *National Labor Relations Board* v. *A. S. Abell Company,* 97 F. (2d) 951. Under the federal rule, substantial evidence is "more than a scintilla and must do more than create a suspicion of the existence of a fact to be established." It must be enough to justify, in a jury trial, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. *National Labor Relations Board* v. *Columbian Enameling and Stamping Company, Inc.,* 306 U. S. 292, 300 (1939).

It has been held that "substantial evidence" sufficient to support findings of the Federal Communications Commission means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Courier Post Publishing Company* v. *Federal Communications Commission,* 104 F. (2d) 213, 70 App. D. C. 80 (1939). Under the system of law guaranteed by our Constitution, the subsidiary facts must be reached from the evidence and the ultimate facts from the subsidiary facts, not arbitrarily or by assumption or conjecture or by a process contrary to reason, but according to reason. Although inferences are to be drawn by the trier of facts and not by the Court, the inferences must necessarily be reasoned inferences. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines,* 303 U. S. 261, 271 (1938).

The conclusion of petitioner that respondent has practiced wilful and deliberate fraud and deception on the Commission is not supported by relevant evidence, or evi-

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dence of quality. A reasonable mind could not conclude that there has been wilful or deliberate deception and misrepresentation because the only testimony in the record is a disavowal of intent to deceive and avowal of good faith and sincerity in the course of action taken.

It has been held that for an administrative agency to refuse to consider evidence or to make an essential finding without supporting evidence is arbitrary action, since a hearing implies both the privilege of introducng evidence and the duty of deciding in accordance with it. *Chicago Junction* case, 264 U. S. 258 (1924). Likewise, it has been held that an administrative agency is bound to give legal effect to facts established in evidence; its order should be set aside if disregard by it is shown of substantial and uncontradicted evidence having a bearing upon the issue; and to refuse to consider pertinent and substantial evidence is considered arbitrary action, sufficient to set aside its order. *Baltimore and Ohio Railroad Company* v. *U. S.*, 5 F. Supp. 929 (N. D. Ohio, 1933).* To discard "the positive credible testimony of witnesses in favor of an inference drawn from tenuous circumstances that at best could have supported only an anemic suspicion" does not meet the test of substantial evidence. *National Labor Relations Board* v. *Sheboygan Chair Company*, 125 F. (2d) 436 (C. C. A. 7th, 1942). There must be a reasonable exercise of administrative discretion having a logical relationship to the facts, which is not the case here. The conclusions of the Commission as to wilfulness and intent to mislead, not having been fairly arrived at, and not being supported by substantial evidence, can "justly be said to be palpably wrong and therefore arbitrary." *Leach* v. *Carlisle*, 258 U. S. 138, 140.

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* See also *Bonwit Teller and Company* v. *Commissioner of Internal Revenue*, 53 F. (2d) 381 (C. C. A. 2d 1931) cert. den. 284 U. S. 690 (1932) holding that although the Board of Tax Appeals may reject the uncontradicted opinion of a taxpayer's expert witness, in the absence of something in the record to support its own different conclusion, the conclusion will not be sustained.

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Since the conclusions of the Commission on the question of wilful and deliberate misrepresentation and deception are not rational conclusions supported by substantial evidence and are in total disregard of the testimony of the principals of respondent which stands undisputed, justice and equity support the decision of the court below in reversing the April 21 Decision and remanding the case to the Commission.

In reversing the Commission, the Court below properly used its judgment on the questions of law raised in the appeal. *S. E. C.* v. *Chenery Corp.*, 318 U. S. 80, 94. It did not substitute its own findings of fact for those of the Commission but held that the findings of the Commission do not rationally support its conclusions as to wilfulness. The court stated that upon independent search, it was unable to find "any single specific portion of the voluminous record before us which would justify the Commission's conclusion of wilfulness" (R. 616). There can be no doubt that determination by the court below under Section 402(e) of the sufficiency of the findings of fact to support the conclusions of law is a proper exercise of the judicial function. *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*, 289 U. S. 266; *Saginaw Broadcasting Co.* v. *Federal Communications Commission*, 96 F. 2d 554 cert. den. 305 U. S. 613. The Court's decision is not concerned with the wisdom or the expediency of the Commission action, but is directed entirely to consideration whether substantial evidence supports the findings and conclusions drawn, and consideration of the improper application by the majority of the Commission of the rule of law in the WOKO case to the facts of record in this case.

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II

The Court Below Correctly Held That the April 21, 1947 Decision Erroneously Cites F. C. C. v. WOKO, Inc. (329 U. S. 223) to Support Denial of the WORL Renewal of License Since the WOKO Case Is Clearly Distinguishable In Fact and Law. That the Decision Is Arbitrary and Capricious Is Manifest From the Fact It Is the Sole Instance Where Unintentional Failure to Report Facts, With No Intention to Deceive, Has Resulted in Denial of a Renewal of License.

Petitioner relies heavily on *FCC* v. *WOKO, Inc.*, 329 U. S. 223 (1946) in support of its authority to deny the WORL renewal application. Paragraph 8 of the conclusions correctly cites *WOKO* as holding "that the Commission may refuse to renew the license of an applicant who has wilfully and knowingly misrepresented facts concerning its stock ownership in reports and applications submitted to the Commission". The decision of this court in *WOKO* states:

> "We cannot say that the Commission is required as a matter of law to grant a license on a *deliberately false* application . . . nor can we say that refusal to renew the license is arbitrary and capricious under such circumstances" (p. 229). (Emphasis supplied.)

But as the court below indicated, there is no evidence of willful or knowing misrepresentation of facts concerning stock ownership in the reports and applications which appellant has submitted to the Commission nor is there evidence of the filing of deliberately false applications. As the opinion below states (R. 615):

> "Certainly the wording of the Commission's Final Decision in this case seems unjustifiably geared so as to bring this case within the doctrine of the WOKO opinion. The majority of this Court believes that a careful examination and comparison will disclose material factual distinctions which take the instant case beyond the purview of the WOKO opinion and thus reveal

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the error of the Commission in applying the WOKO doctrine to the facts of the present case."

The court below showed in detail how the *WOKO* and *WORL* cases are plainly distinguishable on the facts. (R. 615-617). In *WOKO* the motive for the concealment was clearly established and admitted: Sam Pickard testified that his stock interest was concealed purposely so that his employer, CBS, would not learn of his manipulations in station ownership. Pickard was the admitted owner of the stock in question; he received the dividends thereon and took an active interest in the affairs of WOKO during the twelve years his stock ownership was concealed. The record holder Phelps not only did not vote or otherwise participate in the affairs of WOKO but did not even know that he was the holder of record. The Commission never at any time during those twelve years knew that Pickard owned stock in WOKO. He disclosed his ownership only upon Commission investigation. In other words, there was no question that WOKO had filed "false" statements. Pickard had intended to deceive the Commission so that he might deceive CBS.

In WORL, on the other hand, no motive has been shown for concealment or false representation. The Cohens did not assert title to their stock until all claims against the stock were satisfied, and did not participate in the affairs of the station as stockholders until their ownership of stock was reported to the FCC. They did not receive dividends. Nordblom continued to vote the stock in his name, and took an interest in the corporate affairs. A week after the March 25, 1937 closing the Commission knew that Harold Lafount had acquired 400 shares of stock and became President of appellant and ever since November 27, 1938, the Commission had been on notice that Lafount and Sanford Cohen between them held 600 shares—or 60%—of the voting stock of appellant. Ever since the fall of 1943, the Commission has been on notice of the ownership of all the stock of respondent by Lafount

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and the two Cohens. These disclosures were voluntary. They were made as soon as any of the principals of respondent asserted ownership to the stock.

Without exception, the Commission's decisions, both before and after the instant case, hold that where there has been an unintentional failure to report all the facts concerning stock ownership or other matters, with no intention to deceive or deliberate concealment, an applicant will not be disqualified as a licensee. The following cases best illustrate this consistent Commission position.

In re application of KFNF, Inc. Docket 5942, 3 Pike & Fischer Radio Regulations 52 was decided September 19, 1945. There it was held that an illegal transfer of control of KFNF, Inc. had occurred without Commission consent and without notification of the existence of an agreement to transfer control; and further that violations of the Rules had occurred in not reporting to the Commission certain stock options and managerial agreements of a very sweeping nature. However, it was held that the pending application for renewal of license of KFNF, as well as a pending application to transfer control of the station, should be granted since the violations were not wilful and "while the licensee's omissions with respect to these matters are serious, we conclude that there was no deliberate attempt on the part of the licensee to deceive he Commission".

In re application of Lake Erie Broadcasting Company, Docket 7004, decided June 28, 1947, 3 Pike & Fischer Radio Regulations 1265 involved two mutually exclusive applications for a new broadcast station in Sandusky, Ohio, which were heard in a comparative proceeding. It was held that the failure of one of the applicants to file with the Commission a chattel mortgage executed in connection with the sale of a radio station, which was restrictive of the discretionary rights of the licensee, was a violation of Section 1.342 (formerly 43.1) of the Rules, but since it

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was not a deliberate non-disclosure or concealment it would not disqualify the applicant nor so adversely affect his qualifications as to require denial of his application. Accordingly, that application was granted and the competing application denied.*

It is difficult to conceive why respondent, whose record of public service over a period of years is unchallenged, should be denied renewal of its license because of its failure to comply with the reporting requirements of the Rules, with no evidence of deliberate non-disclosure or concealment, when an application for a new broadcast station is granted *and a competing application denied* in the face of a very similar failure to comply with the same requirements of the Rules. The *Lake Erie* record contains only promises for future operation of a new station in the public interest, convenience and necessity—but the WORL record contains concrete detailed and unchallenged evidence of a long history of operation in the public interest, convenience and necessity. Moreover, grant of respondent's renewal application did not require denial of any conflicting application, as did the grant of the Lake Erie application.

A case even more squarely in point is *In Re Application of Charleston Broadcasting Company,* Docket 6611, dated November 26, 1947, 3 Pike & Fischer Radio Regulation 1753. The Commission designated for hearing the application for renewal of license of Charleston Broadcasting Company, licensee of Station WCHS, a 5 KW station on 580kc in Charleston, West Virginia, to determine whether the applicant had an interest in the competing broadcast station, WGKV in Charleston, and whether the facts con-

* In *In re Air Waves, Inc.,* Docket 6155, decided March 20, 1946, 3 Pike & Fischer Radio Regulation 142, the Commission likewise granted an application for a new station and denied a competing application upon a conclusion that while negligence or deceit in executing applications will not be condoned, an applicant is not disqualified because of misstatements, even though material, where there is substantial doubt that the misrepresentation was deliberate or negligent.

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cerning such interest had been concealed from the Commission, in violation of the reporting requirements of its Rules. It was found that the principal stockholder of Charleston Broadcasting Company, John A. Kennedy, who had opposed the grant of Station WGKV, after such grant entered into an agreement to construct WGKV and pay all costs thereof in return for 49% of the stock of the permittee and an option to purchase an additional 11% of the stock for $2,500. When construction was completed, a certificate for 49% of the WGKV stock was endorsed in blank and given to Kennedy, although the stock remained on the corporate records in the name of the endorser, since it was agreed that Kennedy would not exercise any control over WGKV until the debts he had incurred in its construction were paid. A year later, when such debts were paid, Kennedy inquired whether the Commission would approve of his acquiring control of the new station in Charleston, and was told it would not. He thereupon sold his 49% interest and 11% option, but took an option on another 40% of the stock which he finally disposed of in 1942. At no time were any of his interests in WGKV or stock options reported to the Commission although its Rules required that reports be made.

Nevertheless, the Commission granted the WCHS renewal application on the ground that, although the option and the executory agreement for the purchase of stock should have been reported, the failure to report them was not intentional. It was held that since Kennedy testified he had been advised by an FCC employee that reporting his option was unnecessary, and also testified he did not believe he possessed a stock interest required to be reported since the conditions of the executory agreement under which he was to receive stock had not been fulfilled, his failure to report these matters was the result of a misunderstanding. For the ready reference of the court, the text of the WCHS decision is printed as Appendix B to

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this brief. Attention is directed particularly to paragraphs 3 and 4 of the Conclusions in that case.*

The record shows that some of the omissions in filing and delays in filing reports, of which the Commission Decision complains, were due entirely to oversight and inadvertence on the part of the respondent and that as soon as the matters were brought to respondent's attention, the reports were promptly filed. In this connection, the attention of the Court is directed to the following language in a Proposed Decision of the Commission granting an application for improvement of the facilities of Station KWAT, Watertown, S. D., and denying the mutually exclusive application for a new station on the same frequency in Mitchell, S. D.:

> "As contended by the Mitchell applicant, various applications filed by the Watertown applicant over a period from 1939 to 1946 contained responses to inquiries relating to its corporate stock ownership and control which were incorrect or inaccurate. Although the Commission has a right to expect that all documents filed with it shall contain true and correct information, and a licensee or applicant is not relieved of this obligation as to any application or report merely because it has given true information in some other application or report, it is evident from that fact that no wilful deception, concealment of information from, or intent to mislead the Commission is here involved. Accordingly, it is concluded that the Watertown applicant should not, therefore, be disqualified."

In re *Midland National Life Insurance Co.*, Docket 8052, adopted February 21, 1949, 4 Pike & Fischer Radio Regulatoin 1269, 1292. This language of the proposed KWAT Decision may properly be applied to the facts of record in the WORL case.

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* See also decision of September 10, 1948, granting renewal of license of Station WGKV, Charleston, W. Va., notwithstanding misrepresentations as to stock ownership. In re *Kanawha Valley Broadcasting Co.*, Docket 6558, 3 Pike & Fischer Radio Regulation 1927.

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The attention of the Court is also directed to the very recent decision of the Commission revoking its former order of revocation of the construction permit of Television Station WTVJ, Miami, Fla., and granting consent to transfer of control of the permittee corporation to Wolfson-Meyer Theatre Enterprises, Inc. The order of revocation, which was revoked, contains the following recital:

> "IT APPEARING, That the Commission, on March 12, 1947, granted the application (BPCT-183) of the said Southern Radio and Television Equipment Company for construction permit for a new television station (WTVJ) on Channel 4, Miami, Florida, said grant being made without hearing and on the basis of representations made by applicant in its application to the effect that, among other things, stockholders Venn, Nelson and Claughton would finance applicant, that for that purpose applicant had available for deposit to its account, upon grant of the application, bank checks of the aforesaid stockholders in the total amount of $214,000, and that stockholder Venn, by reason of his ownership of a majority of the voting stock would control applicant; and
>
> "IT FURTHER APPEARING, Upon examination of the information and documents obtained in the aforesaid investigation, that the above checks in the amount of $214,000 were never deposited to permittee's account after grant, that in fact permittee has never had such an account, that stockholder Claughton, about or during May 1947, withdrew from permittee and upon withdrawal had returned to him his checks in the total amount of $213,660, that about or during May 1947 the aforesaid Venn relinquished his control over permittee to Wolfson-Meyer Theatre Enterprises, Inc., Miami, Florida, and finally, that the aforesaid Southern Radio and Television Equipment Company, despite the above changes in its financing and control, forwarded to the Commission on July 6, 1948, a statement (Commission Form 323), dated as of December 31, 1947, to the effect that the same ownership and financing of permittee obtained as did at the time of filing of its original application for construction permit; and

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> "IT FURTHER APPEARING, That Southern Radio and Television Equipment Company knowingly concealed from the Commission material facts relative to its ownership and fianncial status and has, in addition, made affirmative misrepresentations of facts to the Commission."

In revoking its order of revocation following a hearing, the Commission concluded that while the permittee had failed to disclose material facts to the Commission which should have been reported and had made false statements in its application concerning proposed financing and the amount of cash which it had on hand, nevertheless the revocation order should be set aside and the transfer of control application approved.

In the *Matter of Revocation of Construction Permit of Television Station WTVJ,* Miami, Florida, and *Application for Consent to Transfer of Control of Southern Radio and Television Equipment Company,* permittee of WTVJ, Dockets 9149, 9114, decided February 4, 1949, 4 Pike & Fischer Radio Regulation 1089. Because of the recent date of this Decision and the contrast of the conclusions contained therein with the conclusions of the Decision in the WORL case, the text of the WTVJ Decision is included in full in Appendix D to this Brief.

The conclusions which the Commission has reached in the foregoing and other recent cases of similar nature are so contrary to the conclusion which has been reached in the WORL case that the arbitrary nature of the WORL Decision becomes readily apparent by comparison. The conclusion in the foregoing cases that the applicants failure to report was not wilful or designed to conceal facts from the Commission and on the evidence it must be found "that the applicant acted in good faith" is the only proper conclusion which can be reached from the record on petitioner's renewal application. It is the only conclusion which can fairly be drawn from the uncontradicted evidence.

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III

The Record Does Not Support the Conclusions of the Commission That Lafount and the Cohens Jointly Acquired Control of Appellant March 25, 1937 and Have at All Times Since Acted as Partners in Operating WORL. No Conclusion Is Reached on the Issue Whether Transfer of Control Occurred Without Commission Consent in Violation of Section 310 (b) of the Act Because the Evidence Shows No Such Violation in Fact Occurred and Further Shows That Although on Notice Since 1938 That Lafount and Sanford Cohen Together Held 60% of Appellant's Stock, the Commission Did Nothing to Require Application for Transfer of Contract to Be Filed. Public Records Show That the Commission Law Department Recommended in 1941 That No Action Be Taken Against Respondent for Violation of Section 310(b) Notwithstanding the Ownership by Lafount and Sanford Cohen of More Than 50% of the Voting Stock, and Also Show That a Renewal of License Was Subsequently Granted WORL in 1942. Assuming That a Violation of Section 310(b) Has Occurred, the Commission in the Past Has Consistently Excused Such Violations When Not Committed in Bad Faith.

The uncontradicted record shows that Lafount and the Cohens did not consider their purchases of stock in respondent a joint venture or a partnership. Their testimony specifically denies that they exercised joint control over WORL. They did not think their respective stock acquisitions resulted in a transfer of control within the meaning of the Act. The record is clear that the purchase by the Cohens of 300 shares of B stock from Nordblom through Ben S. Fisher, as agent, was negotiated separately from Lafount's purchase of 400 shares of B stock from Crockwell and Nordblom and was a separate contract to which Lafount was not a party.

Lafount testified under cross examination by Commission counsel as follows (R. 118-120):

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"Q. You have had a long familiarity with regulation of radio. Is there any other significance that you can see in the failure to report the transfer of this additional 300 shares, either to yourself or to Mr. Fisher or the Cohens?

"A. No, sir.

"Q. You are familiar with section 310 (b)?

"A. Yes, sir.

"Q. Do you know what it provides?

"A. Well, I couldn't exactly quote it.

"Q. In substance?

"A. In substance; yes, sir.

"Q. Will you tell me?

"A. If I recall it correctly, it provides that 60 days after the contract is entered into—no, scratch that.

"Q. You are thinking of some other rule. Section 310 (b) provides there may not be a transfer of control without the consent of the Commission.

"A. Oh, yes, yes, that is right.

"Q. You were there, you yourself, or together with your associates, acquiring control of the corporation, weren't you?

"A. I should say not.

Mr. Fisher: His associates, yes.

The Witness: Control? The majority of the stock? There was no control anywhere. If I bought 51 per cent of the stock, I should be taking control. That is my interpretation.

By Mr. Shuebruk:

"Q. But there were 700 shares being transferred here.

"A. Not by me.

"Q. 400 to you and 300 to the Cohens. The Cohens were your attorneys.

"A. They were buying the stock for their own use and benefit and paid their own money for it.

"Q. They were in the same office with you?

"A. I was in their office when I was in New York. My home was in Washington. I lived here, Wardman Park Hotel. I go to New York and when I was there I had a desk in their office.

"Q. You both work for Mr. Bulova?

"A. That is right.

"Q. They were your attorney, as well as Mr. Bulova's attorney?

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"A. Yes, sir.

"Q. You were associated with the Cohens in other business transactions?

"A. No, sir.

"Q. You, as well as both of the Cohens, are directors and officers, either one or the other, of the Bulova stations?

"A. We are officers in the same corporation, but we are not investors together. We are not associated in the sense of owning stock in any other enterprise.

"Q. And there was one purchase price of $52,500, for the 700 shares.

"A. There were two purchase prices, as the contracts both reveal. Added together, they total $52,500.

"Q. Well, as a matter of fact, it was understood, wasn't it, that the per share price was $75 a share?

"A. That is right, I testified to that, and that is what I mean. If, sir, I was wrong, I made a mistake, but I believe it is not wrong. I believe that is definitely consistent with the law and certainly it is with my interpretation of it."

Sanford Cohen likewise testified under cross examination by Commission counsel as follows (R. 264):

"Q. Was there ever any question about the fact that between you and Lafount that station was in your joint control?

"A. I may not want to put it that way. I would say that if Mr. Lafount and I voted together we controlled it.

"Q. I am asking you about the fact and not hypotheses.

"A. I wouldn't say that.

"Q. Under whose control was it?

"A. I said if Mr. Lafount and I voted together we had control.

"Q. Since 1937.

"A. We have not voted opposite each other. I hope we never do, but we may, I don't know. We may disagree and come to agreement on something.

"Q. As a matter of fact, you never voted?

"A. No.

"Q. Has your brother George ever voted?

"A. He wasn't a director.

"Q. He was part owner of the 300 shares.

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"A. He couldn't vote until he got the 100 shares later.

"Q. He was part owner of the 300 shares.

"A. It wasn't in his name. I couldn't vote the Nordblom stock. The record shows that Nordblom voted it. We couldn't vote it twice."

Cohen also testified under cross examination as follows (R. 254-55):

"Q. If you had reported the 300 shares with the 400 shares of Mr. Lafount's, that would have shown the Commission that a majority of the stock had been transferred on that occasion.

"A. Well, yes; but it learned later. It learned later that it was 400 and 200. In 1938 the Commission knew Mr. Lafount had 400 and I had 200. The most it would have learned the year before is that I had 300 instead of 200, or that my brother had 100 and I had 200. I am not trying to argue; I am trying to set the facts.

"Q. Had that 700 shares been disclosed to the Commission, you would have had to file application for transfer of control.

"A. I think by the same token we should have filed it as far as the 200 was concerned.

"Q. We will get into that, Mr. Cohen. You would have had to file an application for the transfer of control?

"A. I don't know.

Mr. Fisher: That is his interpretation.

Mr. Marks: I am asking if he would have.

The Witness: I am saying this, that I don't know. In my opinion, as I said to the Select Committee, that there was no reason, or I said I was doubtful under the facts in this case, that an application for a transfer would have to be made."

Although the Proposed Decision of the Commission based denial of the WORL renewal on violation of Section 310 (b) of the Act, the final decision reaches no conclusion on the issue whether transfer of corporate control occurred without Commission consent in violation of 310 (b)—and in its brief petitioner appears to abandon any contention

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on this point. This change in Commission position is understandable when evidence on past interpretation of the applicability of 310 (b) is considered. The record shows that prior to 1936 Robert C. Nordblom had no interest in respondent; but that on August 13, 1936, respondent notified the Commission of the acquisition of 500 shares, or 50%, of its voting stock by Nordblom, who was elected its President and a Director (R. 321, 322, 354). Although the Commission was on notice from August, 1936, to March 31, 1947, that Nordblom had acquired 50% of the voting stock and been elected President and Director of respondent, it never required the filing of an application for consent to transfer of corporate control to Nordblom under Section 310 (b) of the Act. It is, therefore, not difficult to understand why Lafount and the Cohens were of the opinion after the March 25, 1937 closing that no Commission consent was required for their respective acquisitions of stock in respondent.

Moreover, the record shows that on November 27, 1938, respondent reported to the Commission that Sanford Cohen had purchased 200 shares of its Class B voting stock (R. App. 355, 391). Thus, the Commission had notice on and after November 27, 1938, that Harold Lafount and Sanford Cohen held 60% of the Class B voting stock (R. 391). Notwithstanding such notice, the Commission did nothing about requiring that application be filed pursuant to Section 310 (b) for consent to a transfer of corporate control from Nordblom to Lafount and Sanford Cohen. How can respondent fairly be accused of wilful failure to comply with the requirements of Section 310 (b) when the Commission itself, having full knowledge of changes in ownership of a majority of its voting stock in 1936 and again in 1938, did nothing to require compliance with what it now interprets to be the requirements of 310 (b)?

Public records show that in 1941, Joseph A. Hines, attorney of Boston, addressed a series of letters to the Commission complaining of alleged violations of Section 310 (b)

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of the Act by appellant.* *These same records show that the attorney in the Law Department of the Commission in charge of all applications filed under Section 310 (b) on October 25, 1941, addressed a memorandum to the Assistant General Counsel in charge of broadcasting directing his attention to Nordblom's acquisition of 50% of the voting stock of respondent in 1936, and Lafount and Sanford Cohen's acquisition of a total of 60% of the voting stock in 1937 and 1938.*** The memorandum concluded as follows:

> "According to the records, the information with respect to these stock transfers, etc., was reported promptly, as required by Section 43.1 of the Commission's Rules. In view of the fact there has been no attempt to mislead the Commission, and that the transfers took place in 1936 and 1937, I see no purpose to be served at this time by presenting the matter to the Commission in connection with the station's application for renewal of license. . . .***

Thereafter, on July 7, 1942, the Commission granted respondent's pending application for renewal of license of Station WORL for the period ending August 1, 1944. Since the record is convincing that the Commission had full knowledge when granting the WORL renewal of license in 1942 that Lafount and Sanford Cohen ever since 1938 had owned 60% of the voting stock of respondent, it is apparent that such ownership was not then considered in violation of Section 310 (b). If the ownership since 1938 of more than 50% of the stock of respondent by Lafount and Cohen was not considered

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* Hearings before the Select Committee to Investigate Federal Communications Commission House of Representatives U. S. 78th Congress December 15, 1943, pp. 5025 *et seq.*

** Pp. 5030-5037, *supra.*

*** For the convenience of the Court, the complete text of this memorandum is included as Appendix C to this brief.

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violative of Section 310 (b) in 1942, why should such ownership be held violative of 310 (b) today?

Assuming arguendo that a violation of 310 (b) occurred at the March 25, 1937 closing, it should be observed that the Commission in the past has consistently excused such violations when not committed in bad faith—*Buffalo Broadcasting Corporation,* Dockets 6324 and 6325, decided December 19, 1945; *KFNF, Inc., supra.* In the former case the Commission found that the applicant had divested itself of control of its facilities, in violation of 310 (b), but emphasized the fact that in a general way the Commission had been informed of the transfer of control because the basic agreement had been filed with it. The same is true in the present case—the Commission knew that Lafount and Sanford Cohen controlled 60% of appellant's voting stock.*

IV

The Commission erred in denying the WORL renewal of license because respondent does not possess the necessary character qualifications of a broadcast licensee when the character of respondent was not in issue and notice of such issue and opportunity to introduce evidence thereon was not afforded respondent.**

The April 21, 1947 Decision denies the WORL renewal of license because respondent "does not possess the necessary character qualifications for a licensee of a radio station". (R. 562) But none of the six issues on which hearing was held have to do with character ~~of~~ qualifications. The issues are concerned with only three questions: (1) The present ownership of respondent; (2) Pos-

* See also *In re Georgia School of Technology (WGST),* 10 F. C. C. 110; *In re Falknor and Schepp, et al. (WPAT),* 10 F. C. C. 401.

** While this contention was raised by respondent in its notice of appeal and brief in the court below, the decision of the court below does not rule upon it.

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sible transfer of corporate control without Commission consent; and (3) The accuracy of reports submitted to the Commission.

Because of the nature of the hearing issues, neither respondent nor petitioner introduced evidence on the character or integrity of respondent or its principals. The record is clear that the Commission through its counsel endeavored to prove that Arde Bulova had an undisclosed interest in Broadcasting Service Organization, Inc.; that there was a transfer of control of respondent without Commission consent in violation of Section 310 (b) of the Act; and that reports have been made to the Commission since 1937 falsely representing the ownership of respondent. The evidence which respondent introduced in the record likewise bears only on these points, except for testimony concerning the merit of its programming and station operation.

The Proposed Decision of October 24, 1945 made no mention of the contention that Arde Bulova held an undisclosed interest in respondent, which contention is completely disproved by the record and thus properly disregarded; but it held that the renewal should be denied because a transfer of control without Commission consent had occurred March 25, 1937 and because respondent had submitted false reports and testimony to the Commission concerning this transfer of control and other matters. No mention was made of character considerations. Respondent's exceptions and oral argument thereon were directed wholly to these grounds for the proposed denial, with character considerations still not in issue.

The April 21, 1947 Decision recast the Proposed Decision so that no conclusion was reached concerning the alleged illegal transfer of control, but it was found that the license should be denied because of the lack of character of respondent. This was the first time that the question of character had been raised. As a result, in its

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Petition for Rehearing of May 13, 1947, respondent urged that ". . . since, for the first time *in the entire proceeding,* a question has been raised concerning the character and fitness of its principals, justice and equity require that the hearing record be reopened to afford opportunity for the applicant to submit evidence concerning the character of its principals and their moral fitness to be licensees of a radio station. . . ." In ordering oral argument on the Petition for Rehearing, petitioner directed that such argument be directed to the Findings of Fact and Conclusion of Law of the April 21, 1947 Decision, *thus foreclosing oral argument on respondent's request for a further hearing to introduce character evidence.* The October 15, 1947 Memorandum Opinion reaffirming the April 21, 1947 Decision makes no decision on, or mention of, respondent's request for a further hearing.

Section 1.803 of the Commission's Rules provides that "reasonable notice of hearing shall be given to all parties to a proceeding" and Section 1.803 (c) provides that such notice shall include "a statement of the matters of fact and law involved in the hearing". This is in accord with the substantially similar notice requirements of Section 5 (a) of the Administrative Procedure Act. Section 1.803 of the Rules supersedes the former Section 1.196 of the Rules, in effect at the time of the WORL hearing, which provided that notice of hearing issues in broadcast cases should be published in The Federal Register "not less than 30 days in advance of the hearing date".

These Rules of the Commission and Section 5 (a) of the Administrative Procedure Act implement and codify the well established rule of administrative law that "the right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them".* It has been held that where proceedings are had under the aus-

* *Morgan, et al.* v. *U. S., et al.,* 304 U. S. 1, 18.

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pices of administrative authorities, all claims must be appropriately set forth so that they may be open to challenge and opposing evidence.** The test of a fair hearing is whether the issues are clearly defined so that the respondent can address itself to the charges made against it. *West Ohio Gas Company* v. *Public Utilities Commission,* 294 U. S. 63 (1935); *N. L. R. B.* v. *Mackay Radio and Telegraph Co.,* 304 U. S. 333, 350 (1938).*** In *Brahy* v. *Federal Radio Commission,* 59 Fed. 2d 879, 61 App. D. C. (1932) it was held:

> "While the burden is on the applicant for a renewal of license justice requires that he should receive notice of charges a sufficient time in advance of hearing to enable him to prepare his defense. . . . An applicant, especially one whose station has been operating for years without being a subject of complaint, ought not to be compelled to incur the expense of producing witnesses at a hearing to meet possible or imaginary charges. He is entitled to reasonable notice of the specific issues to be determined at the hearing. . . ."

The record shows that of the three stockholders of respondent, one is a successful businessman with long experience in government and radio, including service as a member of the former Federal Radio Commission, and the other two are members of the New York Bar, who have practiced corporation law for many years. After indulging in a surprise attack on the character of these men in its April 21, 1947 Decision, the least that the Commission should have done to assure a fair hearing on the renewal application was to grant respondent an opportunity, as requested in its Petition for Rehearing,

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** *Crowell* v. *Benson,* 285 U. S. 22, 48 (1932).

*** *Cf. Consolidated Edison Co.* v. *N. L. R. B.,* 305 U. S. 197, 226-229 (1938); *N. L. R. B.* v. *Biles Coleman Lumber Co.,* 98 Fed. 2d 16, 18 (C. C. A. 9th, 1938); *N. L. R. B.* v. *Hearst,* 102 Fed. 2d 658, 662 (C. C. A. 9th, 1939). Also see *DeJonge* v. *Oregon,* 299 U. S. 353 (1937); *Schneiderman* v. *U. S.,* 320 U. S. 118, 159 (1943); *Tadano* v. *Manney,* 160 Fed. 2d 665 (C. C. A. 9th, 1947).

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to introduce evidence at a further hearing on its character and that of its principals. Section 405 of The Communications Act specifically empowers "the Commission to grant such a rehearing if sufficient reason therefor be made to appear". There are precedents from numerous other administrative boards and Commissions which hold that, where a case is decided on grounds other than those raised in the administrative hearing, justice and equity require that the hearing record be reopened to receive further evidence on the grounds of the decision before final administrative determination is made. *Commissioner of Internal Revenue* v. *Skaggs,* 122 Fed. 2721 (C. C. A. 5th, 1941); *In the Matter of Frank R. Moll et al.,* Securities and Exchange Act of 1934, Release #3600; *Harriet Cotton Mills* v. *Gulf, M. & N. Ry. Co.,* 223 I. C. C. 653; *In the Matter of Cities Service Power and Light Co.,* S. E. C. Holding Company Act, Release #4551.*

Respondent submits that for the Commission to deny its renewal because of a lack of character qualifications, without affording notice of an issue on character qualifications and an opportuinty to present evidence thereon, is to deprive respondent of the fair hearing on its renewal application to which it is by law and rule entitled.

* *Cf. In the matter of Beech Grove Coal Co.,* Docket 1748—F. D. Bit. Coal Division; *In the matter of Breeze Corporations, Inc.,* 3—S. E. C. 709 (1938).

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V

The Commission violated its own rules, exceeded its statutory authority, and deprived respondent of its property without due process of law in denying a hearing on the joint application for transfer of control of respondent from its present stockholders to Bitner Broadcasting Company.**

A period of 18 months elapsed between the October 24, 1945 Proposed Decision and the April 21, 1947 Decision denying the WORL renewal application. On August 26, 1946, ten months after issuance of the Proposed Decision, a joint application was filed requesting Commission consent, pursuant to Section 310 (b) of the Act, to transfer all the stock in respondent from Harold A. Lafount, Sanford H. Cohen and George Cohen to Laurence S. Bitner and Dominic J. Perri, sole stockholders of Bitner Broadcasting Company, Boston, Massachusetts, for a total consideration of $200,000. The application was in proper form, was duly subscribed and sworn to, and was accepted for filing by the Commission and assigned File Number B1-TC-506. (R. 606)

Section 1.321 of the Rules requires that when application is filed for consent to transfer control of a corporation holding a broadcast license, notice of the terms and conditions of the proposed transfer shall be published at least twice a week for the three weeks immediately following the filing of such application in a daily newspaper of general circulation published in the community in which the station is located. The notice shall state that any other person desiring to purchase the facilities upon the same terms and conditions may file an application with the F. C. C. within 60 days from the date of first publication of the notice. The F. C. C. likewise shall pub-

** The court below held that it was unnecessary for it to make a decision at this time on this contention since the case was being reversed and remanded to the Commission on other grounds. (R. 619)

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lish such notice in The Federal Register. The Commission will not act on the transfer application until the 60 day period has expired. Section 1.321 (c) of the Rules then provides in part as follows:

> "If no competing application is filed within this 60 day period, the Commission will consider the original application upon its merits and will grant it if it appears from an examination of the application and supporting data that public interest will be served thereby; otherwise it will be designated for hearing. . . ."

Pursuant to Section 1.321 of the Rules, publication of the proposed transfer was made by the proposed transferors twice a week for three weeks in the Boston Daily Globe, from August 28 to September 14, 1946. Simultaneous publication was made by the Commission in The Federal Register. At no time during such period or at any time thereafter was any application filed with the F. C. C .by any person or group desiring to acquire the outstanding stock of Broadcasting Service Organization, Inc. on the same terms and conditions as Bitner Broadcasting Company. (R. 606-607)

When the 60 day waiting period for competing applications expired October 27, 1946, the Commission did not consider and act on the pending application for transfer of control of respondent to Bitner Broadcasting Company, as required by Section 1.321 (c) of its Rules. Having accepted the application for filing, and having published notice of such filing in The Federal Register, pursuant to Section 1.321 (a), without any competing applications being received, the Commission was bound by Section 1.321 (c) to either grant the transfer application or designate it for hearing. Instead, it took no action on the application until six months later, when in the concluding paragraph of its April 21, 1947 Decision denying the application for renewal of license, it stated that:

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> "In view of our action denying the application for renewal of license, the application for transfer of control of Broadcasting Service Organization, Inc., from its present stockholders to Bitner Broadcasting Company (File No. BL-TC-506) has become moot and is therefore dismissed". R. 564

Respondent submits that, aside from the provisions of Section 1.321 (c) of the Rules requiring that its transfer application either be granted or designated for hearing, Section 309 (a) of the Communications Act compels the Commission to take such action and does not permit a summary dismissal of the application as "moot". Section 309 (a) provides that if upon examination of any application for station license the Commission does not determine that public interest will be served by the granting thereof "it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe".* As Mr. Justice Douglas stated in *Ashbacker Radio Corporation* v. *Federal Communications Commission*, 326 U. S. 327 (1945), "it is thus plain that 309 (a) not only gives the Commission authority to grant licenses without a hearing, but also gives applicants a right to a hearing before their applications are denied . . ." Nothing in the Act, express or implied, authorizes the Commission without hearing to involuntarily dismiss a bona fide application for a station license or transfer thereof which has been filed in accordance with its Rules and has

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* The Senate report on The Communications Act of 1934 (Sen. Report #830, 74d Congress) says: "Section 309 provides for hearings and is copied from Section 11 of the Radio Act". The Conference report on the Radio Act of 1927 (Sen. Doc. 200, 69th Congress) contains the following legislative statement:

> "Section 11 authorizes the licensing authority ..... to issue licenses upon examination of the application if it determines that public interest, convenience or necessity would be served by the granting thereof. It provides, however, that in the event the licensing authority upon examination of an application does not reach such decision with respect thereto, it shall then notify the applicant and fix and give notice of a time and place of hearing on the application."

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been accepted for filing. Such application must either be granted without hearing or designated for hearing. The action of the Commission in not following the statutory alternatives is therefore reversible error.

The petitioner may urge that since its April 21, 1947 Decision denied the renewal of license of Station WORL, respondent no longer had a broadcast license and, therefore, the requested transfer of license to Bitner Broadcasting Company necessarily became a moot question. But such argument ignores the facts. The last regular broadcast license for the operation of Station WORL expired August 1, 1944, yet respondent has continued as licensee of WORL on a temporary basis until the present. Respondent now is now no less a licensee, and on April 21, 1947, was no less a licensee, than on August 26, 1946 when its transfer application was filed with and accepted by the Commission or on August 28 or September 14, 1946, two of the dates when the Commission published notice in The Federal Register, under Section 1.321, of the pendency of its application for transfer of control. If respondent has not had a license susceptible of transfer since August 1, 1944, why did the Commission on August 26, 1946, accept for filing an application of transfer of control and subseqeuntly publish notice of such transfer pursuant to its Rules? When the Commission on April 21, 1947 dismissed its transfer application as "moot", respondent was in fact operating Station WORL and was in a position, subject only to Commission consent, to surrender control of the facilities of the station as a going concern to Bitner Broadcasting Company for $200,000. This is not a moot state of affairs. From respondent's point of view, it is very real.

Even if its own rules and the Act did not specifically require the Commission to give respondent a hearing on its transfer application, the Constitutional guarantee of the 14th Amendment against the taking of property without due process of law would require that a hearing be

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held on such application. A long line of cases hold that in the administrative process, the "inexorable safeguard" of a fair and open hearing must be maintained in its integrity. *St. Joseph Stock Yards Co.* v. *U. S.*, 298 U. S. 38 (1936); *Morgan* v. *U. S.*, 298 U. S. 468; *I. C. C.* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88 (1913). The right to such a hearing is one of "the rudiments of fair play" assured to every litigant by the 14th amendment as a minimal requirement. *Chicago M. & St. Paul Ry. Co.* v. *Polt*, 232 U. S. 165 (1914); *West Ohio Gas Co.* v. *Public Utilities Commission*, 294 U. S. 63 (1935); *Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673 (1930); *B. & O. R. R.* v. *U. S.*, 264 U. S. 258 (1924). As has been so well put by Mr. Justice Holtzoff in a recent case, *American Eagle Fire Insurance Co. et al.* v. *Jordan et al.*, U. S. District Court, D. C., June 25, 1946 (67 F. Supp. 76):

> "In spite of the differences that exist between the judicial and the administrative process, both have certain elements in common. One of these features is that each must comply with the requirements of due process of law, and must pursue procedure that does not transcend these limitations. Due process of law is a process that hears before it condemns. The requirement of a hearing is one of the fundamental principles imbedded in Anglo-American jurisprudence. It is as inexorable a requirement in administrative proceedings involving delegated legislative authority or a quasi-judicial function, as it is in the determination of controversies in courts of law. It is axiomatic that to adjudicate personal or property rights without giving interested parties an opportunity to be heard is contrary to our basic ideas of substantial justice. No encroachment or inroad should be permitted or tolerated in respect to an indispensable safeguard so vital and precious as the right to a hearing before final adjudication."

Respondent submits that in summarily dismissing its transfer application, without hearing, the Commission has in necessary effect denied such transfer without afford-

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ing respondent an opportunity to demonstrate through the hearing process that a grant of the requested transfer of control would serve the public interest, convenience, and necessity.* Such action, in contravention of the Commission's Rules, the Communications Act, and the Constitution, is clearly reversible error.

VI

With the record barren of affirmative evidence of bad faith or intention to deceive, it was arbitrary and capricious for the Commission in its decision to ignore the evidence on the meritorious program service of WORL and to not weigh the extent to which respondent meets the statutory standard of service in the public interest, convenience or necessity.

In *Federal Communications Commission* v. *WOKO, Inc., supra,* the Supreme Court held that it is not arbitrary and capricious for the Commission to refuse to renew a broadcast license without consideration of the merits of program service where the applicant has filed *deliberately false applications* and has been guilty of a systematic course of deception. But here, with the record barren of evidence of concealment and deception, it is clearly arbitrary and capricious for the Commission to not weigh the the evidence on the extent to which the program service and operation of WORL by respondent meets the statutory standard provided by Section 309 (a) of the Act of Service in the "public interest, convenience, or necessity".

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* This summary action is to be contrasted with the Commission Decision in another recent case—*In the Matter of Julio M. Conesa, Ponce, Puerto Rico,* Docket 6105, *et al.,* decided April 22, 1946, 3 Pike & Fischer Radio Regulation 158—wherein renewal of license was granted for Station WPRP, Ponce, simultaneously with the grant of assignment of license of WPRP to a new corporation, upon the finding that although Conesa had on a number of occasions failed to comply with Commission reporting and technical requirements, his renewal should be granted, among other reasons, because he was assigning his license to the new corporation which he did not control.

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The record shows that respondent has been given the McNinch Award of the broadcasting industry for outstanding public service on WORL, and that regular time on the station is devoted free to more than 70 national and local organizations in addition to numerous government agencies, for public service programs. The station has gained listener acceptance to the point where it is a tie for first place during daytime among Boston listeners. In 1937, respondent had $38,000 in debts and was consistently losing money; yet in 1943, it showed a net profit of $25,100. on total receipts of $240,468. Is this evidence which petitioner may completely ignore in determining whether a renewal of the license of respondent will serve the public interest?

In a recent case the Commission granted a renewal of license for Station WSOO, Sault St. Marie, Michigan, despite the applicant's failure to file balance sheets, income statements and the reports for several years, since it appeared, among other things, that the applicant was rendering an improved broadcast service and was remedying its past deficiencies. *In re application of Hiawathaland Broadcasting Company,* Docket 6208, decided September 12, 1945, 3 Pike & Fischer Regulation 44. This case is typical of many in which, despite omissions in the filing of reports or other violations of the rules, renewals of license have been granted upon consideration of counterbalancing factors, particularly meritorious program service and continued operation in the public interest.* Moreover, in a number of cases which involved undoubted fraud and deception, with deliberate concealment, renewals of license have been granted upon consideration of meritorious program service and operation in the public inter-

* *In re Cannon System LTD. (KIEV),* 8 F. C. C. 207; *In re Lee E. Mudgett (KRKO),* 8 F. C. C. 226; *In re KVOS Inc. (KVOS),* 8 F. C. C. 172; *In re Arthur Faske (WCNW),* 8. F. C. C. 570.

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est.** It would therefore seem wholly arbitrary, in the absence of evidence of fraud or concealment, for the Commission to refuse to weigh the undisputed evidence rgarding the program service and operation of WORL in the public interest.

VII

Petitioner's Brief Is Based Upon the Assumption, Not Justified by the Record, That Respondent Engaged in a Course of Concealment and Deception; That Its Actions Were Taken With a Reckless and Wilful Disregard of Its Duties to the Commission; and Therefore Respondent Does Not Possess the Character to Continue Operating the Station. The Fact Is That There Is No Evidence of Concealment or Misrepresentation, nor of Intent to Conceal or Misrepresent, nor of Reckless or Wilful Disregard of Its Duties as a Licensee. Those Elements May Not Be Established in the Manner in Which Petitioner Attempts — by Piling Inference Upon Inference. The Commission's Decision Is Based Only on the Alleged Concealments and Deceptions of Respondent, With No Findings or Conclusions as to Reckless and Wilful Disregard of Its Duties as a Licensee. Petitioner on Appeal Is, Therefore, Attempting to Inject Into the Case a Ground for Denial of the Renewal Which Is Without Support in the Decision From Which Appeal Is Taken. The Authorities and Arguments Set Forth in Petitioner's Brief Are Not Controlling or in Point on the Facts of Record.

While the arguments in Petitioner's brief have been substantially answered in the foregoing points, some further comment on petitioner's brief may be of interest to the Court.

** *In re Georgia School of Technology (WGST)*, 10 F. C. C. 110; *In re Panama City Broadcasting Company (WDLP)*, 9 F. C. C. 208; *In re Ocala Broadcasting Company (WTMC)*, 9 F. C. C. 223; *In re Navaro Broadcasting Association (KAND)*, 8 F. C. C. 198; *In re KTBC, KNET, KRBA, KGKB, KSAM, KGFL*, 8 F. C. C. 445-484 incl.; *cf. In re John H. Stenger, Jr. (WBAX)*, Docket 6723, Decided May 29, 1946.

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The Commission's Decision does not include any Findings of Fact or Conclusions of Law as to the alleged reckless and wilful disregard by respondent of its duties and responsibilities as a licensee, of which the brief of petitioner here complains. It is proper that the Decision contains no Findings and Conclusions on heedlessness or recklessness because the record will not support it. It must be remembered that the Commission's refusal to renew is predicated solely on the alleged misrepresentation, concealment, and deception from which it is concluded that the respondent does not possess the requisite character to remain a licensee (R. 562). As has been emphasized, this ground for the Decision necessarily involves wilfulness and bad faith, of which there is no evidence. The brief of petitioner, in attempting to expand the ground of the Commission's Decision to include heedlessness and recklessness, is necessarily injecting into the case a ground for denial which is without support in the Decision from which appeal is taken. It is certainly too late at this time for petitioner to seize upon a new ground (which is not supported by the record) to attempt to justify the Commission's Decision based on lack of character due to misrepresentations and concealments. This Court on review should not go beyond the stated grounds of the Commission's Decision.

A fundamental defect with the position of the Commission in its Decision and in its brief is the attempt to support the conclusion of concealment and deception by piling inference upon inference. Petitioner first states that there were certain deficiencies in filing on the part of respondent, and then draws the inference that they were the result of wilful deception and then upon that inference draws further inference that respondent lacks the requisite character qualifications to be entrusted as a radio station licensee. The fallacy of this line of reasoning is the complete absence from the record of evidence of wilfulness or intention to deceive or bad faith on the part of respondent.

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Petitioner states that the Court below did not challenge the findings of the Commission that over a period of 6 years and on numerous occasions respondent misrepresented facts in reports required by and made to the Commission. The fact is that the Court specifically held, as did dissenting Commissioner Jett, that there were no such misrepresentations or concealments. It is very significant that even in the majority Decision of the Commission it is conceded that the purpose which may have "led the principals in this case to conceal the full extent of the various stock transactions is not entirely clear". Men do not misrepresent or conceal simply for the purpose of misrepresenting or concealing. No person of mentality or intelligence would risk a substantial property interest simply for the pleasure of misrepresenting or concealing. The fact is that there was no misrepresentation; there was no concealment; and there was no evidence to sustain the finding of the Commission on these points. To say that the Court of Appeals did not challenge the finding of the Commission is a startling statement since the Court of Appeals stated specifically and definitely that it was unable, after a careful examination of the record, to find bad faith and stated that "the record amply supports respondent's protestations of good faith" (R. 617). Certainly if the record does demonstrate good faith, there can be no concealment nor misrpresentation.

Petitioner also claims in its brief that the Court below held that the decision of this Court in the WOKO case "must be narrowly restricted to its facts". This contention is apparently in furtherance of petitioner's claim in its petition for certiorari that the supervision of this Court is needed to control the actions of the Court below. What the Court below said was that it believed a careful examination and comparison discloses material factual distinctions which take this case beyond the purview of the WOKO opinion (R. 615-617). Point II above demonstrates this to be so.

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Petitioner in its brief continually refers to "the admitted misrepresentations and concealments of the respondent". Nowhere in the record, or in any of the briefs of respondent, has there ever been any admission by respondent that there have been misrepresentations and concealments. In fact, the respondent has repeatedly denied that there were any misrepresentations or that they had concealed anything from the Commission. The record fully confirms and supports this denial.

In petitioner's brief there are several instances where mention is made of the inquiry before a Select Committee of the House of Representatives. These references have apparently been made in an attempt to hint that no disclosure would have been made by respondent had it not been for the hearings before the Select Committee. This Select Committee did not have for its purpose an inquiry into the affairs of Broadcasting Service Organization, Inc., but was a Select Committee appointed to investigate the Federal Communications Commission. Nowhere in the record does it appear that any action was taken by the respondent because of, or as a result of, the activities of that Committee. The report of the Cohens' ownership of the 300 shares was filed with the Commission promptly upon the settlement of the Nordblom claims and assertion of ownership by the Cohens. A number of the other stock reports, of which petitioner complains, were filed prior to the existence of the Select Committee.

Petitioner questions the position of the Cohens that they refused to accept ownership of the 300 shares until the Nordblom dissatisfaction was settled, inasmuch as George Cohen was willing to purchase an additional 100 shares from Nordblom in 1940. However, petitioner's brief overlooks the fact that the testimony of George Cohen shows that the 100 shares which he bought in 1940 were purchased by him in the belief that he would thereby settle the Nordblom dissatisfaction. In this connection, George Cohen testified as follows (R. 285):

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Question (by Commission counsel): "How did it happen that you later acquired the additional 100 shares from Mr. Nordblom as a transfer from certificate B-51"

Answer: "As Mr. Lafount stated, he had learned that Mr. Nordblom wanted to sell it and he asked me whether I would buy it, and so I thought I would buy it. I thought in that way we might clear the whole situation, and we bought it. And then Mr. Nordblom again stated that he was dissatisfied."

In petitioner's brief, it is claimed that Nordblom's dissatisfaction as to the 100 shares of Class B stock stems from 1943 when he wrote a letter to Lafount and received a reply from Lafount. As a matter of fact, Nordblom, who was called as a witness for and on behalf of the Commission, testified as follows (R. 343):

Q. "Did you remain on from 1940 to 1943 on account of your being dissatisfied in connection with the matter of the determination of the 100 shares?

A. "To the best of my recollection, that may have been a part of the reason why I stayed there, because I was dissatisfied."

In the brief of petitioner, the point is made for the first time that on July 12, 1937 Arde Bulova loaned Crockwell $500 on a 6 months note and as security for the note Crockwell pledged 200 shares of Class B stock still owned by him. The point is further made that sometime, date not given, Crockwell pledged 900 shares of Class A (non-voting) stock as security for another loan. Apparently, it is not contended that either of these pledges were at that time required by rules of the Commission to be reported, but criticism is based on the fact that on May 11, 1938 the Commission promulgated Rule 340.01 which required all licensees to submit within 30 days certain information required by form 728 including a request for "information relative to all contracts (written or oral) or other instruments which affect or concern. . . . the ownership or control over the station or rights and interest therein".

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Criticism is made that on July 11, 1938, when the stock was still pledged, applicant executed form 728 which showed Crockwell to be the owner of the shares and in response to the question concerning instruments which affect or concern the ownership or control over the station or rights and interest, applicant stated that there was "None".

In the first place, these criticisms are nowhere contained in the Findings of Fact or Conclusions of the Decision of the Commission or in the decision of the Court of Appeals, and are raised for the first time on this appeal by petitioner, in an apparent attempt to bolster the weakness of its case. Further, we submit that these instruments did not affect the ownership or control over the rights to the station or rights and interest therein. Until the pledged stock was sold, as it later was, the report made by the respondent was correct. It is very significant that with all the picayune criticism made of the actions of the respondent, this contention on the failure to report the pledges is now made for the first time. In this instance, as in all other instances which are cited by petitioner in an effort to add weight to its case, there is no basis for any conclusion of bad faith, concealment or deception.

Petitioner gives an erroneous account of the transaction involving the 100 shares sold to George Cohen on September 24, 1940. It states that the transfer was made on November 15, 1943, before Nordblom's claim had been settled. This ignores entirely the testimony given in this case. On page 280 of the record, George Cohen testified that he had learned of Nordblom's dissatisfaction of this transaction from Lafount, as recounted by Crockwell; and he had learned of Miss Whitwell's claim that all the stock belonged to her. His testimony further continues (R. 280):

> "I said I wasn't going to transfer it on the books and I wasn't going to vote any of the stock or act with respect to the stock until Mr. Lafount cleared up the situation, not only for that 100 shares, but for the other 300."

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> "It was finally cleared up when Mr. Davison arranged for the payment of $750 to Mr. Nordblom and a release was given, but I think Mr. Lafount had been told over the telephone by Mr. Davison that it was settled, and then we transferred the stock and then made a report of it."

This testimony shows that the transfer was made as soon as there was a telephone report. All the parties felt that this telephone assurance was sufficient, and the transfer was made, knowing that the release would be forthcoming. The contention of petitioner entirely disregards this testimony and draws an inference that the record does not justify.

Petitioner claims that the $750 payment was only for the 1940 transaction. The proof is overwhelming that Crockwell had told Lafount that Nordblom was dissatisfied. While the Commission has referred to a letter of Nordblom, releasing only the 100 shares, the proof is that that release had been rejected. Respondent's Exhibit "1" is the letter of November 27, 1943, from Nordblom to Lafount which releases not only the 100 shares of Class B stock, but also all other claims "arising out of your purchase from me of both Class A and Class B Common shares" for the sum of $750. (R. 350) The petitioner also disregards the testimony of George Cohen (R. 286) under cross examination by Commissions Counsel as follows:

> "Q. The $750 is still unallocated between you?
> "A. It is my present belief it is all covered; but if it isn't, I will pay him."

This clearly indicates that the settlement of $750 was not for the 100 shares bought in 1940, but covered, as well, the 300 shares in 1937. If the $750 was in settlement of the 100 shares, then it would be an obligation to be paid entirely by George Cohen. It is only because it includes settlement for the other 300 shares as well that any need arises for an allocation of the amount of the settlement between the two Cohens.

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Petitioner's Brief discusses the acquisition by Sanford Cohen of the 200 shares of Class B stock from Crockwell on July 28, 1938. The gist of the Commission's argument is that since Davidson had bid in those shares upon foreclosure in the name of Arde Bulova, a transfer of title to the stock from Crockwell to Bulova was therefore effected. This entirely disregards the facts of the transaction. The testimony definitely shows that because of the failure of Crockwell to pay the $5,000 loan he had obtained from Bulova, for which he had put up the 200 shares of B stock as collateral security, Bulova directed a foreclosure of his lien upon the shares. The record further shows that Davison had been directed to purchase the shares for Sanford Cohen, who had gone on a vacation to California and did not return until September. In the meantime, Davison, contrary to his instructions, bought the stock in the name of Bulova. *This stock was never delivered to Bulova.* He did not desire to purchase it. Accordingly, upon Sanford Cohen's return from California, the matter was taken up with Davison who was informed that the purchase was improperly made and that Bulova did not want to buy the stock and had no intention of buying it. Under these circumstances, Mr. Bulova was never the owner of the stock. Sanford Cohen, who directed that the stock be bought for him, was not the record owner until some affirmative step was taken to bring the transfer into his name. Thus, there was no transaction that could be reported to the Commission until the stock was properly in his name. When this was done, report was made to the Commission.

Petitioner's Brief discusses the purchase of 900 shares of Class A stock by Lafount from Crockwell on March 8, 1939 and the failure of Lafount to immediately report this transaction. Subsequently, on April 1, 1940 respondent filed application for a construction permit to improve its facilities; and in this application listed Lafount as owning 900 shares of Class A stock. The Commission not having any prior record of Lafount having purchased such shares, inquired

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of respondent concerning the same. In response to this inquiry, a report was filed on April 15, 1940 showing that the 900 shares had been transferred from Crockwell to Lafount on March 8, 1939. This course of events proves conclusively that *there was no wilful refusal to report nor was there an attempt at concealment.* If respondent desired to conceal this stock transfer it certainly would not have mentioned Lafount's ownership of the 900 shares in the application for a construction permit. The most that can be contended by petitioner is that there was an oversight in not reporting the transaction sooner. But such an oversight is far removed from wilful misrepresentation or concealment.

Petitioner cites *People* v. *Jernatowski,* 144 N. E. 497, 238 N. Y. 188, on the question of the recklessness or wilfulness of respondent's actions. In the first place this is a criminal case (involving the crime of murder), and is based largely on a statutory definition of that charge. The Court did hold, in effect, that under the circumstances of that case, no specific motive or intent to bring about the criminal act need be established when it is shown that the defendant acted with *reckless* and *wilful disregard* of the consequences of his conduct (firing a gun into decedent's house) under circumstances when the harmful consequences of that conduct could have been foreseen.

There is, in the instant case, not the slightest evidence of *recklessness* or *wilful disregard* of the respondent's obligations to the Commission, nor is there present any evidence of a result of Appellant's actions which produced "harmful consequences" to the Commission, the public, or anyone else. This is recognized by the decision of the Court below in the following language (R. 618):

> "Failing in its efforts to specifically establish a lack of good faith on the part of appellant, appellee in its brief next attempts to show appellant's lack of qualifications as a licensee by resort to inference and presumption. In its brief, appellee states: "Appellant

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fails to recognize that a reckless disregard of the duties and responsibilities of a licensee manifested over a substantial period of time by gross carelessness and wilful disregard of the true facts known to the licensee or available to it, in making reports to the Commission, may as clearly demonstrate a want of qualifications to be a licensee as the making of misstatements for a revealed motive." The chief difficulty with this statement is that it presupposes "reckless disregard" of duties and "gross carelessness and wilful disregard" of facts by appellant which are not shown by the record. Nor is the absence in the record of evidence of wilful and reckless disregard cured by appellee's attempted analogy between this case and cases of imputed intent in torts or in criminal law because such allegedly analogous cases all require a showing of heedlessness of the foreseeable harmful consequences. Here there is no substantial evidence of any heedlessness and it is conceded that there have been and can be no harmful consequences flowing either to the Commission or to the public interest as a result of appellant's improper reports."

In point B of its brief, petitioner cites *National Labor Relations Board* v. *Link Belt Co.*, 311 U. S. 584; *Republic Aviation Corp.* v. *National Labor Relations Board*, 121 F. 2d 658, and other cases in support of the proposition that the Commission may draw inferences from the facts and that it is the Commission, not the Courts, which is empowered to draw such inferences. Respondent does not take issue with the principles of law embodied in these cases. It is sufficient to point out, as specifically stated in the Republic Aviation case, that inferences which administrative agencies may draw must be *reasoned inferences based upon the facts proven, which is not the case here.* The authorities cited by petitioner do not hold that where findings of fact are not supported by substantial evidence, as in the instant case, they shall be conclusive on appeal, nor do they hold that unreasonable inferences or inference upon inference may be drawn from the facts of record. The cases cited by respondent in point I above clearly

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show that although inferences are to be drawn by the agency and not by the Court, such inferences must necessarily be reasoned inferences having a logical relationship to the facts. *National Labor Relatinos Board* v. *Pennsylvania Greyhound Lines,* 303 U. S. 261, 271. The several cases included in the brief of petitioner necessarily so provide and are, therefore, not in point on this appeal.

CONCLUSION

The Decision of the Court below should be affirmed.

Respectfully submitted,

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APPENDICES

APPENDIX A

STATUTES INVOLVED

The Sections of the Radio Act of 1927, the Communications Act of 1934, as amended, and the Administrative Procedure Act, which are involved in this appeal are:

Sections 307(a) and 307(d) of the Communications Act of 1934, as amended:

> Sec. 307(a). The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act.
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> • • • •
>
> Sec. 307(d). No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses and not to exceed five years in the case of other licenses, but action of the Commission with reference to the granting of such application for renewal of a license shall be limited to and governed by the same considerations and practice which affect the granting of original applications.

Sections 308(a) and 308(b) of the Communications Act of 1934, as amended:

> Sec. 308(a). The Commission may grant licenses, renewal of licenses, and modifications of licenses only upon written application therefor received by it: Provided, however, That in cases of emergency found by the Commission, licenses, renewals of licenses, and modifications of licenses, for stations on vessels or aircraft of the United States, may be issued under such conditions as the Commission may impose, with-

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out such formal application. Such licenses, however, shall in no case be for a longer term than three months: Provided further, That the Commission may issue by cable, telegraph, or radio a permit for the operation of a station on a vessel of the United States at sea, effective in lieu of a license until said vessel shall return to a port of the continental United States.

Sec. 308(b). All such applications shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.

Section 11 of the Radio Act of 1927, substantially reenacted by Section 309(a) of the Communications Act of 1934, as amended:

Sec. 309(a). If upon examination of any application for a station license or for the renewal or modification of a station license the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportuinty to be heard under such rules and regulations as it may prescribe.

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Sections 310(a) and 310(b) of the Communications Act of 1934, as amended:

Sec. 310(a). The station license required hereby shall not be granted to or held by—

(1) Any alien or the representative of an alien;
(2) Any foreign government or the representative thereof;
(3) Any corporation organized under the laws of any foreign government;
(4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;
(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted, after June 1, 1935, by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

Nothing in this subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when the installation and use of such apparatus is required by Act of Congress or any treaty to which the United States is a party.

Sec. 310(b). The station license required hereby, the frequencies authorized to be used by the licensee, and the rights therein granted shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly by transfer or control of any corporation holding such license, to any person, unless the Commission shall, after secur-

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ing full information, decide that said transfer is in the public interest, and shall give its consent in writing.

Section 311 of the Communications Act of 1934, as amended:

Sec. 311. The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under section 313, and is hereby authorized to refuse such station license and/or permit to any other person (or to any person directly or indirectly controlled by such person) which has been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such person for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopolies and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such corporation.

Section 313 of the Communications Act of 1934, as amended:

Sec. 313. All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought under the provisions of any of said laws or in any proceedings

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brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: Provided, however, That such licensee shall have the same right of appeal or review as is provided by law in respect of other decrees and judgments of said court.

Section 402(b)(1) of the Communicaitons Act of 1934, as amended:

Sec. 402(b). An appeal may be taken, in the manner hereinafter provided, from decisions of the Commission to the Court of Appeals of this District of Columbia in any of the following causes:

(1) By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

Section 402(e) of the Communications Act of 1934, as amended:

Sec. 402(e). At the earliest convenient time the Court shall hear and determine the appeal upon the record before it, and shall have power, upon such record, to enter a judgment affirming or reversing the decision of the Commission, and in event the court shall render a decision and enter an order reversing the decision of the Commission, it shall remand the case to the Commission to carry out the judgment of the court: Provided, however, That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by sub-

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stantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 240 of the Judicial Code, as amended by appellant, by the Commission, or by any interested party intervening in the appeal.

Section 405 of the Communications Act of 1934, as amended:

Sec. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear: Provided, however, That in the case of a decision, order, or requirement made under title III, the time within which application for rehearing may be made shall be limited to twenty days after the effective date thereof, and such application may be made by any party or any person aggrieved or whose interests are adversely affected thereby. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted, the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

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Section 5(a) of the Administrative Procedure Act:

> Sec. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court and (6) the certification of employee representatives—
>
> (a) Notice—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

Section 10(e) of the Administrative Procedure Act:

> Sec. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—
>
> (e) Scope of Review—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

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(2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

RULES INVOLVED

The Sections of the Rules and Regulations of the Federal Communications Commission which are involved on this appeal are:

Sec. 1.321. Application for voluntary assignment or transfer of control; broadcast—(a) Applications for consent to the assignment of a construction permit or license for an AM, FM, television or other broadcast station or for consent to the transfer of control of a corporation holding such a construction permit or license shall be filed with the Commission on FCC Form No. 314 (Assignment of License) or FCC Form No. 315 (Transfer of Control). Each application shall be accompanied by a copy of a proposed notice in a form prescribed by the Commission which notice the licensee or permittee shall cause to be published at least twice a week for the 3 weeks immediately following the filing of such application in a daily newspaper of general circulation published in the community in which the station is located. The notice shall state the terms and conditions of the proposed assignment or transfer, the name of the proposed assignee or transferee, and, further, that any other person desiring to purchase the facilities upon the same terms and conditions may file an application to this effect with the Federal Communications Commission within 60 days from the date of the first publica-

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tion of the notice, which date shall be expressly set forth therein. Upon receipt of the application, the Commission itself will issue a similar public notice stating the terms and conditions of the proposed sale and stating that others may file competing applications for the same facilities upon the same terms and conditions.

(b) No action on any such application will be taken by the Commission for a period of 60 days from the date of first publication, during which time any person desiring to purchase the facilities upon the same terms and conditions may file a competing application. In the case of such competing application, it shall be necessary for the applicant to execute only so much of the application form as relates to the proposed assignee or transferee—F. C. C. Form No. 314, part II, and Form No. 315, part III.

(c) If no competing application is filed during this 60-day period, the Commission will consider the original application upon its merits and will grant it if it appears from an examination of the application and supporting data that public interest will be served thereby; otherwise it will be designated for hearing. If, during such 60-day period, any other application is filed, all such applications will then be considered simultaneously upon their merits, and if, upon such consideration, it appears that the proposed assignee or transferee selected by the licensee is the best qualified and that the transfer would otherwise be in the public interest, the Commission will grant the original application without a hearing. If the Commission is unable to make such a determination upon consideration of the several applications, the original application and all competing applications will be designated for hearing, to be heard in a consolidated proceeding, to determine among other things which of the applicants is best qualified to operate the station in the public interest.

(d) If, at the conclusion of such hearing, the Commission is of the opinion that the proposed assignee or transferee selected by the licensee is the best quali-

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fied and that the transfer is otherwise in the public interest an order will be entered granting the original application. However, if the Commission is of the opinion that one of the other applicants is the best qualified and that a transfer is otherwise in the public interest, an order will be entered denying the original application and stating that the Commission's consent to an assignment of the license or construction permit or to the transfer of control of the corporate licensee or permittee to such competing applicant will be given provided the licensee or permittee and such competing applicant enter into and file with the Commission within 30 days from the date of such order a contract for the assignment of the license or construction permit, or the transfer of control of the licensee or permittee, to such competing applicant upon the same terms and conditions as stated in the original application or upon such other terms and conditions as the parties may agree upon and which new terms and conditions the Commission shall find to be in the public interest.

Sec. 1.390. Petitions for reconsideration or for rehearing.—

(b) Where an application has been granted or denied after hearing, petitions for rehearing may be filed within 20 days after public notice is given of the Commission's action in granting or denying the application. Petitions for rehearing by persons not parties to the Commission's hearing will not be granted unless good cause is shown as to why it was not possible for such person to participate earlier in the Commission's proceeding.

(c) Petitions for reconsideration or rehearing filed under this section may request (1) reconsideration, either in cases decided after hearing or in cases of applications granted without hearing; (2) reargument; (3) reopening of the proceeding; (4) amendment of any findings; or (5) such other relief as may be appropriate. Such petition shall state specifically the form of relief sought and, subject to this requirement, may contain alternative requests. Each such petition shall state with particularity in what respect the decision, order or requirement or any matter determined therein

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is claimed to be unjust, unwarranted, or erroneous, and with respect to any finding of fact must specify the pages of record relied on. Where the petition is based upon a claim of newly discovered evidence, it must be accompanied by a verified statement of the facts relied upon, together with the facts relied on to show that the petitioner, with due diligence, could not have known or discovered such facts at the time of the hearing.

Section 1.196(a) of former Rules of Practice and Procedure:

Sec. 1.196. Notice of hearing under part I of title III.—In cases arising under part I of title III of the Act notice of applications received and action thereon shall be given in the following manner:

(a) By publishing the notice of hearing in the Federal Register not less than 30 days in advance of the hearing date.

Section 1.803 of present Rules and Regulations:

Sec. 1.803. Notice of hearing.—Reasonable notice of hearing will be given to all parties to a proceeding. Such notice shall include:

(a) A statement as to the time, place and nature of the hearing. Where the time and place cannot be designated in the initial notice, the notice will indicate that the time and place will be designated by subsequent notice.

(b) A statement as to the legal authority under which the hearing is to be held.

(c) A statement of the matters of fact and law involved in the hearing.

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APPENDIX B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.
Docket No. 6611
File No. B2-R-715

In re Application of
CHARLESTON BROADCASTING
COMPANY (WCHS)
Charleston, West Virginia
For renewal of license

DECISION

BY THE COMMISSION: (Commissioner Hyde not participating; Commissioners Durr and Jones dissenting)

1. These proceedings are upon an application of the Charleston Broadcasting Company, Charleston, West Virginia, for renewal of license of its Station WCHS, Charleston, West Virginia, for the period beginning June 1, 1944. The said application was designated for hearing by the Commission upon issues designed to determine, in substance, full information concerning the nature and extent of any interest that the applicant or its stockholders may have had in other broadcasting stations, particularly Station WGKV, Charleston, West Virginia, licensed to the Kanawha Valley Broadcasting Company; whether any such interests were reported to the Commission as required by the Commission's Rules and Regulations; and whether the statements and representations made to the Commission from time to time by or on behalf of the applicant or its stockholders have fully and accurately reflected the facts concerning such other interests.

2. After some delay due primarily to the unavailability of Mr. John A. Kennedy, principal stockholder in the applicant corporation and at the time of the hearing on active military duty, hearings in this matter were held on April

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9 and 17, 1945, and October 15 and 31, 1945, before a presiding officer duly appointed to preside in this case. Proposed findings have been filed by the applicant herein and have been duly considered in our findings and conclusions set forth below.

FINDINGS OF FACT

3. The Charleston Broadcasting Company is a West Virginia Corporation and the licensee of Station WCHS, Charleston, West Virginia, and Station WBLK, Clarksburg, West Virginia. Mr. John A. Kennedy, President of the Corporation, and his wife own approximately 84% of its outstanding stock. Mr. Kennedy's radio interests also include the Ohio Valley Broadcasting Corporation, licensee of Station WPAR, Parkersburg, West Virginia, a wholly owned subsidiary of the applicant herein, and Kennedy and his wife have a 48% stock interest in WSAZ, Inc., licensee of Station WSAZ, Huntington, West Virginia. These four stations have been operated as the West Virginia network. The record before us presents the question whether for a period of time subsequent to the grant of a permit for construction of station WGKV, Charleston, West Virginia, the applicant herein, or Kennedy, also held any interest in the Kanawha Valley Broadcasting Company, licensee of Station WGKV, and whether, if any such interests were not reported, the failure to report them was under such circumstances as to warrant a denial of the instant application.

4. On July 13, 1938, a construction permit was issued to the Kanawha Valley Broadcasting Company, effective July 23, 1938, for the construction of Station WGKV, Charleston, West Virginia, to operate on the frequency 1500 kc—changed to 1490 kc in February 1941—unlimited time, with 100 watts power. At the time this permit for station WGKV was issued to the Kanawha Valley Broadcasting Company, a West Virginia corporation, all the stock in

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that company consisting of 250 shares of stock with a par value of $100 per share, was owned by Mr. William A. Carroll. This stock is referred to below as the WGKV stock. Mr. John A. Kennedy, President and principal stockholder in Charleston Broadcasting Company, licensee of Station WCHS, the only other broadcasting station then in Charleston, had opposed a grant of the construction permit for Station WGKV.

5. Some time in the fall of 1938 Mr. Kennedy conferred with Mr. George Porter, then Assistant General Counsel of the Commission, in charge of the Broadcast Division, and inquired whether or not it was necessary to report options for the purchase of stock in radio stations to the Commission. He was advised by Porter that it was not necessary to report such options. Shortly after this conference Kennedy approached Carroll and offered to construct Station WGKV and pay all the costs of such construction in return for 49% of the stock in the licensee of Station WGKV and an option to purchase an additional 11% of the stock for twenty-five hundred dollars ($2500). This proposal was accepted by Carroll and the option for purchase of 11% of the stock was issued to Kennedy shortly after construction began. On September 18, 1939, construction and installation of the broadcast facilities of Station WGKV was largely completed and several days later a certificate dated September 21, 1939, for 122 shares of the WGKV stock—49% of the total of such stock—was issued in the name of William A. Carroll who, under date of September 25, 1939, endorsed the stock certificate in blank and gave custody of the certificate to Kennedy. However, the corporate records continued to show ownership of such stock in the name of Carroll, since it was agreed between Carroll and Kennedy that Kennedy would not have the stock in his name or dispose of it or exercise any control over the affairs of Station WGKV until he had satisfied all of the debts he had incurred in the construction of the station.

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6. By November or December 1940 Kennedy had met all of these obligations with the exception of certain attorney's fees in the amount of $1500, or was in a position to meet all such obligations. Accordingly, for the first time, under the terms of his agreement with Carroll, Kennedy was in a position to exercise any control over the stock. He was also at that time financially able to exercise the option which he held for purchase of an additional 11% of the stock in WGKV. Accordingly, about that time he visited the office of the then Chairman of the Federal Communications Commission and after advising the Chairman that he, Kennedy, was in a position to obtain control of another local station, inquired whether the Commission might approve such a transfer of control. Kennedy testified that the Chairman expressed his strong belief that the Commission would not approve such a transfer of control. Thereupon Kennedy decided to sell his interest in Station WGKV, and during the period, December 1940—January 1941, he negotiated and concluded an agreement with one A. H. Crawford under which Crawford purchased the 49% interest of Kennedy in the WGKV stock and the option held by Kennedy for purchase of an additional 11% of such stock. Kennedy then took an option from Carroll for the remaining 40% of the stock in WGKV which was not involved in the sale to Crawford. He retained this 40% option until the beginning of 1942 when he sold that option to Worth Kramer, who also at the same time acquired the 11% option held by Crawford.

7. The first studios of WGKV were constructed in the WCHS auditorium. This agreement was made by Kennedy and Carroll in the interest of economy in operation of both stations. Mr. Kennedy testified that he had at no time exercised any control over the operation of Station WGKV, nor had any of his employees exercised or attempted to exercise such control. Mr. Kennedy did testify, however, that the first manager of Station WGKV was initially recommended to Mr. Carroll by him through Mr. Chernoff,

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his radio manager, and that he did negotiate a network contract for WGKV in conjunction with a contract which he was negotiating for his station in Clarksburg, West Virginia. The only testimony to the contrary is in the testimony of Mr. Sowers, the first manager of WGKV, who alleged that he was supplied with a list of prospective advertisers with instructions to "lay off" those indicated on the list and that he received instructions from Mr. Chernoff, manager of WCHS, and Miss Mercer, Mr. Kennedy's former secretary, who also mentioned the list and said that she exercised some supervision of WGKV's books. Miss Mercer, however, was discharged in 1941 and admitted that she was antagonized by Mr. Kennedy's conduct with respect to the employment of certain auditors to manage his office. However, Mr. Kennedy and Mr. Chernoff both emphatically denied that any control of radio WGKV was ever exercised or attempted either by themselves or any employees under their supervision. On this basis of this record, the Commission is unable to find that Mr. Kennedy exercised any control over Station WGKV as a stockholder or part owner.

8. During the period in 1938 when Carroll and Kennedy first reached their agreement through the end of 1940 the Charleston Broadcasting Company filed a number of statements with the Commission concerning its interests and those of its stockholders in other radio broadcasting stations. On each of these applications inquiry was made concerning other interests of the applicant in the field of radio broadcasting, and the answers to these questions in the applications filed by Charleston Broadcasting Company did not report any interest of Kennedy in Station WGKV.

CONCLUSIONS

1. Two serious questions confront us in this case. The first is whether Kennedy, principal stockholder in the applicant, possessed any interest in Station WGKV between the years 1938-1942 which the applicant was, under the

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Commission's regulations, required to report to the Commission. If he possessed any such interest, the second question is presented whether the failure of the applicant to report the interest of Kennedy resulted from inadvertence or misunderstanding, or whether it represented a design on the part of Kennedy to conceal his interest in Station WGKV.

2. As to the first question, we must hold that the interests involved should have been reported to the Commission. These interests were option contracts for the purchase of stock in a radio station and an executory contract for the purchase of stock in a radio station, under which title would not pass to the promissor until all conditions were performed or all consideration promised shoul dbe furnished. The applications filed by applicant on July 21, 1939, and November 29, 1939 (File No. B2-P-2334, B2-P-807, and B2-P-2739), which were for increase in power and other changes in conditions under which WCHS operation was authorized, contained the following question:

> "16. If applicant, or any partner, officer, member of the governing board, director, or principal stockholder has, or has had, any interest of any character whatever in, or any connection with, any of the following, there is submitted herewith a full and complete disclosure of the nature and extent of the interest in or connection with each. (If neither applicant, nor any of said parties, has, or has had, any such interest or connection, so state.)
>
> (a) . . .
>
> (b) Any radio broadcast station? ——————"

This question calls for "a full and complete disclosure of the nature and extent" of "any interest of any character whatever in, or any connection with . . . (b) any broadcast station." This question is certainly broad enough in scope to encompass an option agreement or an executory agreement for the purchase of stock in a broadcast station. The interests may not mature into full ownership because

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the option may not be exercised, or because the conditions of the executory contract may not be wholly fulfilled; nevertheless they are in fact substantial and valuable interests which may be exercised and which are entitled to legal protection.

3. Although the interests involved should have been reported by the applicant to the Commission, we are unable to find that the failure to report in this case was intentional and designed to conceal the facts from the Commission. We must find, rather, on the evidence before us, that the applicant acted in good faith. First, as to the option held by Kennedy for the purchase of 11% of the stock of Station WGKV, Kennedy testified that he has inquired of Mr. George Porter, then Assistant General Counsel in Charge of Broadcasting, whether an option for the purchase of stock of a broadcast station is the type of interest which must be reported to the Commission, that Mr. Porter informed him that such an interest need not be reported, and that as a result of this statement of Mr. Porter, he did not report the option because he believed that he was not required to do so. We must therefore conclude that while Kennedy acted erroneously in failing to have the opttion reported, he acted in good faith, believing that he was not required to do so.

4. As to the interest in 49% of the stock of WGKV, Kennedy testified that since all the consideration promised by him had not been furnished, and the condition upon which he was to assume ownership of the stock had thus not been fulfilled, he believed that he did not possess an interest in WGKV which he was required to report. For the reasons set out above in the findings, we are unable to conclude that Kennedy exercised any control over the affairs of Station WGKV, or otherwise acted in a manner inconsistent with the status which he described in his testimony. We, therefore, conclude that the applicant's failure to report the 49% interest of Kennedy in Station WGKV was

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the result of misunderstanding, and was without intent to conceal the facts from the Commission. Under these circumstances, we cannot conclude that a failure to observe the Commission's requirements resulting from misunderstanding reflects so adversely upon the applicant's qualifications to be a licensee as to require a denial of its application for renewal. Cf. *Buffalo Broadcasting Company,* Docket Nos. 5324 and 6325, adopted December 19, 1945.

5. IT IS, THEREFORE, ORDERED this 26th day of November, 1947, that application of Charleston Broadcasting Company BE AND IT IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION *
T. J. Slowie
Secretary

RELEASED: December 2, 1947

APPENDIX C

Memorandum of October 25, 1941, from David Deibler, Chief, Section 310(b) of the Law Department, Federal Communications Commission, to Mr. Lucien Hilmer, Assistant General Counsel in Charge of Broadcasting, Federal Communications Commission (pp. 5034-5037, Volume 39, Hearings Before the Select Committee To Investigate Federal Communications Commission, House of Representatives U. S. 78th Congress):

> "The attached letter from Attorney Joseph A. Hines, Boston, of September 26th is in furtherance of earlier correspondence in 1939 and 1941 in which we asked him to give us all the information he had. He still has not furnished such information as would enable us to take any possible constructive action. The question is whether we shall pursue this correspondence further with him.

* Commissioners Jones and Durr voted for denial of the application for renewal of license of Station WCHS, the latter by a short written opinion.

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"I have had Miss Marvick chart all the transfers with regard to WORL (formerly WBSO) since 1934 (see attached table). From Mr. Hines' letter, it would appear that he is talking about the matter of Crockwell, Eynon and Phelan transferring their stock after the Commission had granted an application for transfer of control (B1-TC-33) to them, which was in 1935. According to the table, you will note that on December 3, 1935, the Commission granted the application for transfer of control to them from Babson's Statistical Organization. Crockwell received 400 shares (40%) of the 1,000 shares outstanding; Eynon and Phelan each received 300 shares (together 60%) of the outstanding stock. On July 29, 1936, under an amendment to the Articles, 1,000 new shares of Class B common voting stock were issued, half of which was issued to Robert Nordblom, a new stockholder. The remaining 500 shares were issued to Crockwell, Eynon and Phelan in the following respective amounts: 200, 150, and 150 shares. At the same time, the former outstanding common voting stock was converted into Class A preferred non-voting. The effect of this amendment was to give the three individuals 50% of the voting stock rather than 100%. Technically, there resulted a divestment of control over the corporation by the three parties named.

"Thereafter, on March 25, 1937, Eynon and Phelan each transferred all of their 150 shares of voting stock and Nordblom transferred 100 of his 500 shares of voting stock to Harold Lafount, well known representative of Arde Bulova. Thereafter, on September 30, 1938, Crockwell transferred an additional 200 shares (of his 400 remaining shares) of voting stock to Sanford Cohen. After these transfers of March 25, 1937 and September 30, 1938, the voting stock was held as follows:

"Lafount	400 shares
"Sanford Cohen	200 shares
"Nordblom	400 shares
Total	1,000 shares

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"Thus, Crockwell, Eynon, and Phelan, to whom the transfer was made in 1935, held no voting stock whatsoever.

"According to the records, the information with respect to these stock transfers, etc., was reported promptly, as required by Section 43.1 of the Commission's rules. In view of the fact that there has been no attempt to mislead the Commission, and that the transfers took place in 1936 and 1937, I see no purpose to be served at this time by presenting the matter to the Commission in connection with the station's application for renewal of license. I recommend, however, that the facts be borne in mind and to this end placed in the folder of WORL, to be considered in connection with whatever rules on duplicate ownership may be adopted by the Commission pursuant to Order 84 of August 5, 1941.

"David H. Deibler,
"Chief, Section 310(b), Law Department."

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APPENDIX D

In the Matter of Revocation of Construction Permit of television station WTVJ,
Miami, Florida
Docket No. 9149
and
Application for Consent to Transfer of Control of Southern Radio & Television Equipment Company, permittee of television station WTVJ
Miami, Florida
Docket No. 9114
File No. BTC-636

DECISION

By Paul A. Walker, Commissioner

Preliminary Statement—Docket No. 9149 (Revocation Proceeding)

1. On January 10, 1947, Southern Radio and Television Equipment Company (hereinafter referred to as Southern) filed an application (File No. BPCT-183) for permit to construct a new television station in Miami, Florida, to be operated on Channel No. 4. The application was granted without hearing on March 12, 1947 and the permittee was assigned the call letters WTVJ. Thereafter, an investigation indicated that Southern, in its application and in other documents filed in connection therewith, concealed from the Commission material facts relative to its ownership and financial status and, in addition, made affirmative misrepresentations to the Commission.

2. On the basis of the information developed in the investigation, on July 29, 1948 the Commission, pursuant to Section 3.12(a) of the Communications Act of 1934, as amended, issued an order revoking Southern's construction

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permit.[1] Pursuant to the provisions of that section, and in accordance with Section 1.402 of the Commission's Rules and Regulations, the permittee requested a hearing on the order of revocation. The hearing was held in Miami, Florida, from October 25, 1948 through October 27, 1948. The record also includes the testimony by deposition of a Commission witness which was taken in New York on November 15, 1948.

PRELIMINARY STATEMENT—DOCKET NO. 9114 (TRANSFER OF CONTROL)

3. The above-entitled application (BTC-636, Docket No. 9114) for consent to the transfer of control of Southern to Wolfson-Meyer Theatre Enterprises, Inc., was filed on

[1] The findings made in the Order of Revocation are as follows :

"IT APPEARING, That the Commission, on March 12, 1947, granted the application (BPCT-183) of the said Southern Radio and Television Equipment Company for construction permit for a new television station (WTVJ) on Channel 4, Miami, Florida, said grant being made without hearing and on the basis of representations made by applicant in its application to the effect that, among other things, stockholders Venn, Nelson and Claughton would finance applicant, that for that purpose applicant had available for deposit to its account, upon grant of the application, bank checks of the aforesaid stockholders in the total amount of $214,000, and that stockholder Venn, by reason of his ownership of a majority of the voting stock would control applicant; and

"IT FURTHER APPEARING, Upon examination of the information and documents obtained in the aforesaid investigation, that the above checks in the amount of $214,000 were never deposited to permittee's account after grant, that in fact permittee has never had such an account, that stockholder Claughton, about or during May 1947, withdrew from permittee and upon withdrawal had returned to him his checks in the total amount of $213,660, that about or during May 1947 the aforesaid Venn relinquished his control over permittee to Wolfson-Meyer Theatre Enterprises, Inc., Miami, Florida, and finally, that the aforesaid Southern Radio and Television Equipment Company, despite the above changes in its financing and control, forwarded to the Commission on July 6, 1948, a statement (Commission Form 323), dated as of December 31, 1947, to the effect that the same ownership and financing of permittee obtained as did at the time of filing of its original application for construction permit; and

"IT FURTHER APPEARING, That Southern Radio and Television Equipment Company knowingly concealed from the Commission material facts relative to its ownership and financial status and has, in addition, made affirmative misrepresentations of facts to the Commission."

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April 19, 1948. On October 15, 1948, at the request of the parties to this application, the Commission designated the application for hearing in a consolidated proceeding with the hearing on the revocation order. The order of consolidation specified separate issues on which the transfer application was to be heard.[2]

REPRESENTATIONS MADE IN THE APPLICATION FOR CONSTRUCTION PERMIT

4. The application for construction permit was made a part of the hearing record by reference. It is considered necessary to set forth certain representations therein made, which are pertinent to the Commission's order of revocation. It was represented that the original capital structure of the corporation provided for an issue of 50 shares of common stock (par value $10.00, 1 vote per share), to be held 66% (33/50) by R. G. Venn, 32% by Edward N. Claughton, and a single qualifying share by the company's attorney Edward J. Nelson; that Venn was the President and director, Claughton, Vice-President and director, and

[2] These issues are as follows:

"1. To determine whether the proposed transferee is legally, financially, technically and otherwise qualified to own or control and to operate station WTVJ, Miami, Florida.

"2. To determine the full contract arrangements or agreement of sale either presently made or to be made by the proposed transferor with the transferee, including the price and the manner of payment and the properties to be receivd therefor.

"3. To secure full information as to the plans of the proposed transferee for staffing the station, its plans with respect to the station's programming, and all other plans or arrangements for the operation of the station.

"4. To determine whether the construction permit for station WTVJ, granted to Southern Radio and Television Equipment Company, or the rights and responsibilities incident thereto, have been transferred, assigned, or disposed of, directly, or indirectly, without the consent of the Commission to the proposed transferee herein, and in contravention of the provisions of the Communications Act of 1934, as amended, and more particularly Sections 319(b) thereof.

"5. To determine whether all contracts, obligations, undertakings and agreements which have been entered into by the proposed transferor and by the proposed transferor with proposed transferee relative to the ownership, operation, financing and control of Southern Radio and Television Equipment Company have been reported to the Commission as is required by its Rules and Regulations.

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Nelson, Secretary-Treasurer and director; that the cash on hand as of December 31, 1946 was $500.00, consisting of three (3) checks received from the stockholders in payment for their common stock; that to finance the construction and initial operation of the station the applicant held two checks drawn by Claughton in the amount of $163,500 and $50,000, respectively;[3] that Claughton was to receive 21,350 shares of preferred non-voting stock (par value $10.00 per share) and that he had agreed to purchase 18,650 additional shares of such preferred stock if and when the corporation should need further financing; that although the issuance of preferred stock was not authorized by the charter it would be amended to provide therefor; that the checks totaling $213,500 and the three checks in the amount of $500 would be deposited to a new account in the name of the corporation on March 1, 1947, or upon receipt of the construction permit; that Claughton's participation was limited solely to the furnishing of funds; and that he was to have nothing to do with the management of the corporation, which was to be left to Venn.

FINDINGS OF FACT (DOCKET NO. 9149, REVOCATION MATTER)

5. Southern was organized and its application filed through the efforts of Robert G. Venn. Neither Venn nor Nelson had issued checks, as claimed, for the purchase of their common stock. Mr. Venn testified that he had not issued his check ($330), for by the time the application was filed he had already expended considerably more than this amount on behalf of the corporation. Mr. Nelson admitted that he had not issued a check as represented, but explained that the other checks were held in the office of his law firm, for Southern, and he was in a position to issue his check

[3] While Claughton's balance sheet submitted as an amendment to the application, on February 3, 1947, showed only cash on hand in the amount of $60,000, it was evident that he had more than sufficient assets available to meet his commitments.

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($10) on "two seconds notice." Claughton's two checks were postdated to March 1, 1947 but the Commission was not so informed. On March 12, 1947 the application of Southern was granted, and on April 11, 1947 a telegram was sent to the corporation informing it of this action. On April 30, 1947 a construction permit was mailed to the permittee. Claughton's checks were not deposited upon receipt of the construction permit nor was the charter amended to provide for the issuance of preferred stock. On or about March 1, 1947 he had orally requested Southern to withhold deposit thereof and had indicated his desire to withdraw from the corporation.

6. On June 4, 1947 Claughton advised Southern by letter that it was his desire to withdraw his subscription to the 16 shares of common and 40,000 shares of preferred stock and to have no further interest in Southern financially or otherwise. This letter was prepared by Southern's attorney, at Venn's request, and it was Venn who requested Claughton to sign it. In the letter he stated "if the board of directors of the corporation act favorably upon my offer of withdrawal, I shall, of course, expect the corporation to redeliver to me the two (2) checks above-mentioned. Further, if the board of directors of the corporation takes such affirmative action upon my request I desire to tender my resignation as vice-president of the corporation effective immediately." He asked that the matter be taken up at the next meeting of the board of directors. It was not considered by the board until a much later date as is hereinafter stated. Southern did not at any time inform the Commission of these facts. Venn testified that the Commission was not so informed because Southern had no intention of releasing Claughton from his obligations until other financial support could be arranged.

7. When Venn first learned that Claughton was not interested in financing Southern, which was before its application had been granted, he immediately began seek-

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ing other financial assistance. In May of 1947 he discussed with Mr. Wolfson of Wolfson-Meyer Theatre Enterprises, Inc. (hereinafter referred to as Wometco) the possibility of his company financing Southern's venture. When Venn discussed this matter with Wolfson, he (Venn) was employed by Lincoln Operating Company, a subsidiary of Wometco. He had been employed by this company, shortly after Southern filed its application, to assist it in its efforts to obtain a new AM station at Miami. During his period of employment with Lincoln, Venn made trips with employees of Wometco for the purpose of keeping Mr. Wolfson informed on the progress of the art of television. Wometco paid his expenses for these trips but he received no salary. When Lincoln Operating Company acquired a 9% interest in Sun Coast Broadcasting Corporation, which eventually was granted a construction permit for a new AM station in Miami under the call letter WMIE, Venn assumed the position of General Manager of the station and was so employed as of the date of this hearing.

8. Negotiations between Venn and Wometco on the question of financing Southern took place on numerous occasions between May of 1947 and approximately February or March of 1948 when Wometco entered into a contract to purchase Southern. According to Wolfson, he was interested in acquiring control of Southern but was unwilling to do so unless Claughton could be eliminated as a stockholder. Venn agreed to assure Claughton's withdrawal if Wometco finally decided to invest in Southern. This was done by having Claughton sign the letter of June 4, 1947 addressed to Southern as above stated. On March 25, 1948 Southern finally acted upon this letter, accepted Claughton's resignation and returned his two checks. On that date Claughton signed a release acknowledging return of his checks, and he testified that this was the date of their return. The negotiations extended over a lengthy period of time because of the many technical and legal details to be resolved. These problems as reflected by the record

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were that Wolfson had to convince the stockholders of Wometco that they should go into this project upon a substantial scale; that a determination had to be made of certain income tax problems which might otherwise have inhibited the proper operation of the company; that the extent of Venn's participation had to be determined; that a management contract had to be negotiated with Venn; and that it was necessary to draft an adequate agreement which was satisfactory to all of the parties.

9. Venn received $300 monthly from Wometco for his expenses incurred on behalf of Southern's venture. These payments commenced around May of 1947 and ceased on December 31, 1947. From February 5, 1948 to September 30, 1948 Wometco advanced a total of $97,657.66 to Southern for the purchase of equipment and payroll expenditures. For this advance Southern issued to Wometco five (5) demand notes, bearing 5% interest. In June of 1948 Southern opened a bank account in the First National Bank of Miami, Florida, and funds advanced by Wometco were deposited therein. Venn is the only person who may draw checks on this account, but checks written by him must be countersigned by an employee of Wometco who is loaned to Southern to keep its financial records. The Commission at no time was informed of this arrangement. Wolfson testified that Wometco's reasons for advancing this money to Southern were: "* * * in order for them to have sufficient funds to meet their commitments, both to the FCC as to getting television equipment to the public in the public interest and getting television for the Fall of 1948 for Miami; our desire to assist them and to hope that we would be permitted to take over control of this company by the FCC; we advanced them the money * * * that were necessary, as a loan, to proceed to purchase this equipment, to proceed to do the construction that was necessary, and to proceed to try to bring television to the Greater Miami area."

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As of the date of this hearing, Wometco had committed itself in the amount of $300,000 for equipment, etc., necessary to complete construction of the station. According to Mr. Wolfson's testimony, Wometco never intended nor has it ever attempted to assume control of Southern. He stated that Venn received assistance in connection with business and financial matters from Wometco, but he has always had the final authority with respect to matters relating to the construction of the television station and management of Southern.

10. On October 13, 1947 Southern filed its application BMPCT-121 requesting additional time within which to complete construction of the station. Venn answered in the negative a question in the application: "Have there been any changes in the information heretofore submitted by the applicant in the application for construction permit, any amendments thereto, or a modification thereto since filing?" On July 6, 1948 Southern submitted to the Commission its "Annual Ownership Report" (Form 323), purporting to reflect the ownership of Southern as of December 31, 1947. That report, made under oath, stated that Venn, Claughton and Nelson held the same stock and participated in the corporation in the same capacity as originally provided in the application for construction permit.

FINDINGS OF FACT (DOCKET NO. 9114, TRANFER APPLICATION)

11. Notice of the filing of the transfer application was duly published in accordance with the Commission's Rules and Regulations but no competing application was filed within the time specified by the Rules.

12. The proposed transferee, Wolfson-Meyer Theater Enterprises, Inc. is a Florida Corporation authorized to issue 250 shares of stock ($100 par value, equal voting) all of which has been issued. The officer's directors and stock-

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holders of the corporation, all of whom are residents of Miami, Florida, and U. S. citizens, are as follows:

Name		*Percentage of Stock Owned*
Mitchell Wolfson	President & Director	16%
Sidney Meyer	Vice President & Director	16.13/15%
Francis Wolfson	Director	2. 3/15%
Zenia Meyer	Treasurer & Director	3.14/15%
Francis Wolfson as Trustee		29. 6/15%
Mitchell Wolfson as Trustee		2. 6/15%
Sidney Meyer as Trustee		2. 6/15%
Zenia Meyer as Trustee		26.12/15%
Albert B. Bernstein	Secretary & Director	

The above trusts were created by the several members of the families for the benefit of their children. The trustees have full and unrestricted discretion in voting the trust stock and conducting the business affairs of the corporation. The stockholders have never been convicted of a crime and there are no outstanding judgments or decrees against them.

13. *Mitchell Wolfson,* the principal officer of Wometco, was born in Key West, Florida, and has resided in Miami continuously for the last 30 years. He has been and is now an officer or director in numerous civic and charitable organizations in the Miami area. He served three terms, a total of six years, as a City Commissioner of Miami Beach and then for a short time was Mayor, resigning that position to enter the military service in 1943. A number of outstanding civic leaders of Miami and Miami Beach appeared at the hearing and testified that Wolfson's reputation in those communities as to cooperation with civic, charitable and eleemosynary institutions is excellent, and that he is one of the communities outstanding citizens.

14. *Sidney Meyer* is a director or member of the following organizations: Board of Trustees of the Jackson Memorial Hospital; the Board of Directors of the Dade County Chapter of the Boy Scouts of America; the Board of Direc-

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tors of the Light House for the Blind; the Citizens Advisory Board of the University of Miami; and the Miami Beach Chamber of Commerce.

15. *Wolfson-Meyer Theatre Enterprises, Inc.* is engaged in the ownership operation and management of motion picture theatres and numerous affiliated enterprises confined to the greater Miami area. It owns 20% of the voting stock of Sun Coast Broadcasting Corporation, licensee of Station WMIE, Miami, Florida. There is an affiliated corporation known as the Wolfson-Meyer Charitable Foundation formed by the two families for the purpose of contributing to medical research, educational funds and various charitable and other eleemosynary works. All of the money in the fund, which has been in operation some eight years, is contributed by the families. Each year Wometco gives six scholarships to the University of Miami, four scholarships for white boys and girls and two scholarships to colored boys and girls. The winners of the scholarships are selected by the high schools on the basis of scholastic ability, character and economic need.

16. The transfer of control is to be executed by simple stock subscription. On March 22, 1948, the stockholders of Southern approved an amednment to its Articles of Incorporation which provides for the issuance of 1000 shares of Class A common stock (par value 9.50) and 333 shares of Class B common stock (par value 1.00). All of the stock has equal voting rights. The holders of Class A stock are required to lend $200 per share to the corporation repayable after twenty years with no interest payable during the first three years. Under a stock subscription agreement of March 1, 1948, Wometco subscribed to all of the Class A stock. The Class B stock was subscribed by Robert G. Venn 200 shares; Mitchell Wolfson 200 shares; Sidney Meyer 35 shares; Francis Wolfson 30 shares; Zenia Meyer 30 shares. Mitchell and Francis Wolfson, and Sidney and Zenia Meyer are husband and wife.

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17. Messrs. Claughton and Nelson are receiving no consideration for their stock relinquishment except the return of their investments. Mr. Venn is receiving no monetary consideration except return of sums advanced by him and is changing his status from a majority to a minority stockholder in consideration of having a new and financially responsible stockholder to take the place of the financier who desires to withdraw. In addition he has entered into a contractual agreement to manage the television station.

18. The program plans originally submitted by the permittee have been approved by the transferee, but it intends to take advantage of new developments so as to expand and improve the original showing. A program is to be developed in cooperation with the State agricultural experimental station to show the farmers' particular methods of fighting insects, improving crops, and preventing blights and viruses. The station will be used in full cooperation with Miami University and the permittee will take the initiative in the planning and development of programs. The permittee has already paid $1,800 to the University for an agreement for the broadcasting by television of the University's athletic events. Particular emphasis will be placed upon the development of local talent, for the executives of the company have had extensive experience in that field in connection with their motion-picture-theatre operation.

19. Special training has been given the proposed program manager of the station. He has had a course of instruction in television techniques with the General Electric television station at Schenectady, New York, and has studied television production at New York and elsewhere. Other employees, who had been assembled by Southern during the construction of the television station are also available.

20. The current assets of Wometco are $319,770, in addition to its share of cash and negotiable securities in

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the hands of affiliated companies, amounting to $454,990. The transferor understands that the television station may lose money, but is prepared to insure its operation.

CONCLUSIONS

1. The questions to be decided, as we see them, are as follows: (1) Did the failure of Southern to open a bank account and deposit Claughton's checks as represented in its application, constitute a misrepresentation to the Commission; (2) Did the fact that Claughton, prior to March 1, 1947 orally, and on June 4, 1947 in writing, indicated his desires to resign as vice-president and to be relieved of his financial obligations to Southern, actually constitute a change in the corporate and financial structure of Southern which should have been reported both in its application (File No. BMPCT-121) and in its "Annual Ownership Report", showing the corporate structure of Southern as of December 31, 1947; and (3) Did Southern actually relinquish control to Wolfson-Meyer Theatre Enterprises, Inc. at any time?

2. It appears clear from the evidence that Southern's application was filed in good faith and that the directors of Southern intended to establish a bank account in Southern's name in which Claughton's checks were to be deposited either on March 1, 1947, or when the construction permit was granted. The fact that later events brought about changes in fiscal plans does not render deceitful or intentionally misleading those plans first contemplated. We, therefore, conclude that, to this extent, Southern made no misrepresentations to the Commission in its original application.

3. From the evidence in this record we must find that a reasonable doubt existed as to Claughton's actual status in Southern prior to March 25, 1948. He testified that prior to March 1, 1947, he had orally requested that his checks not be deposited and had expressed his interest in with-

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drawing from Southern. He further stated that as of that date he "literally and actually" considered himself no longer associated with Southern. In the absence of a legal ruling on Claughton's obligation to Southern it is doubtful whether the transaction up to that point justified such an assumption by Claughton. He was aware that Southern held his checks which could have been negotiated if Southern had elected to do so. The record does not show that he took any action to prevent the use of the checks, although they were not returned to him within a reasonable time after his letter of June 4, 1947. This letter evidences Claughton's recognition of his actual status in Southern and is inconsistent with his testimony that he considered himself "literally and actually" no longer associated with Southern after March 1, 1947. The record does show that Messrs. Venn and Wolfson considered Claughton to be associated with Southern after March 1, 1947. It was for this reason that Venn had Claughton sign the letter of June 4, 1947. They both considered this letter to be the means by which Mr. Claughton could be separated from Southern, if and when Wometco finally agreed to purchase control thereof. There can be no doubt that, as of June 4, 1947, Wometco intended to purchase a financial interest in Southern, when certain arrangements, essential to the purchase, were concluded. There is also no doubt that Venn intended to return Claughton's checks, when a definite contract was signed by the parties to the transfer transaction. We are of the opinion that this changed circumstance, which affected the entire financial structure of Southern, was one that should have been reported to the Commission, within a reasonable time after June 4, 1947. However, the record does show that Venn did not deliberately conceal this matter from the Commission. Although it is considered that a more prudent person would have reported these changed circumstances to the Commission, we do not feel that Southern was so remiss in this matter as to warrant affirmation of the Commission's order revoking its construction permit.

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4. The evidence shows that the relationship of Southern and Wometco from May, 1947 through March, 1948 was closer than that which ordinarily exists between lender and borrower or a proposed transferor and transferee. We refer specifically to the fact that Wometco had paid Venn in connection with his management of Southern from May 1947 to December 31, 1947 and commencing in February 1948 had advanced large sums of money for the construction of the television station. The record is not clear as to why Venn was paid by Wometco as mentioned, but there is no evidence that this had any effect on Venn's control of Southern. Mr. Wolfson's testimony is clear as to why the advances commencing in February were made, and we have no doubt concerning the reasonableness of his statements. The record shows that in February or March, 1948, approximately one month after these advances commenced, Wometco did enter into a contractual agreement to purchase control of Southern and that on April 19, 1948, the application for consent to the transfer of control was filed with the Commission. We do not consider that the evidence up to this point in the transactions supports a finding that Wometco assumed unauthorized control of Southern.

5. The undisputed facts in this record show that when Southern opened a bank account in June of 1948, Venn was unable to cash any checks without the countersignature of a Wometco employee. The Commission was not informed of this arrangement and, therefore, had no opportunity to determine beforehand, whether it constituted a transfer of control. Through its employee, Wometco was in a position to veto Mr. Venn's power of fiscal control of Southern. It is believed that such an arrangement could result in a transfer of control. We feel that, in such a case, the question of transfer must be resolved by examining the various facts concerning the arrangment together with any contracts that may exist in connection therewith. We, therefore, believe that this arrangement, and the reasons

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therefor, should have been reported to the Commission for a determination of the transfer question, before it went into effect. However, Wometco did not exercise this power over Southern except formally to approve expenditures for the construction of the station. In addition, the record discloses that the president of Wometco did not consider this arrangement to be an incident of control. In view of the foregoing we conclude that there was no actual transfer of control of Southern to Wometco.

6. As will be recalled, Southern, in its application, represented that it had cash on hand in the amount of $500, consisting of three (3) checks received from the stockholders as payment for their common stock. Messrs. Veen and Nelson testified that they had not issued checks for their stock, as represented. There can be no doubt that this constituted a misrepresentation to the Commission. In their testimony, these men gave rather nebulous reasons for their obvious lack of candor in this matter. However, in view of the circumstances surrounding this matter, we do not feel justified in concluding that this was a deliberate attempt to conceal facts bearing upon the qualifications of the applicant. It would seem unreasonable for the Commission to sustain its order of revocation solely on this ground.

7. While it is considered that neither Wometco nor Venn acted prudently in this matter, we do not feel, after a careful consideration of all of the facts, that the evidence in this case justifies the affirmation of the Commission's order revoking the construction permit of Southern Radio and Television Equipment Company (WTVJ). Accordingly, it is ordered that the order of revocation in this matter be, and it is hereby, revoked.

8. On the basis of the facts contained herein, we conclude that the transferee, Wolfson-Meyer Theatre Enterprises, Inc. is legally, technically, financially and otherwise qualified to operate Station WTVJ; that it proposes a pro-

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gram service designed to meet the needs of the community; and that a grant of the application for consent to the transfer of control of Southern Radio and Television Equipment Company thereto would be in the public interest. Accordingly, it is ordered, that this application be, and it is hereby, granted.

9. Dated at the offices of the Federal Communications Commission this 5th day of January, 1949.

PAUL A. WALKER
Commissioner

On February 4, 1949, the following notice was released by the Commission:

"Notice is hereby given that no appeals have been taken from the Initial Decision in the above entitled proceeding, dated January 5, 1949, within the required time, and that pursuant to 8(a) of the Administrative Procedure Act such Initial Decision is final as of January 26, 1949."

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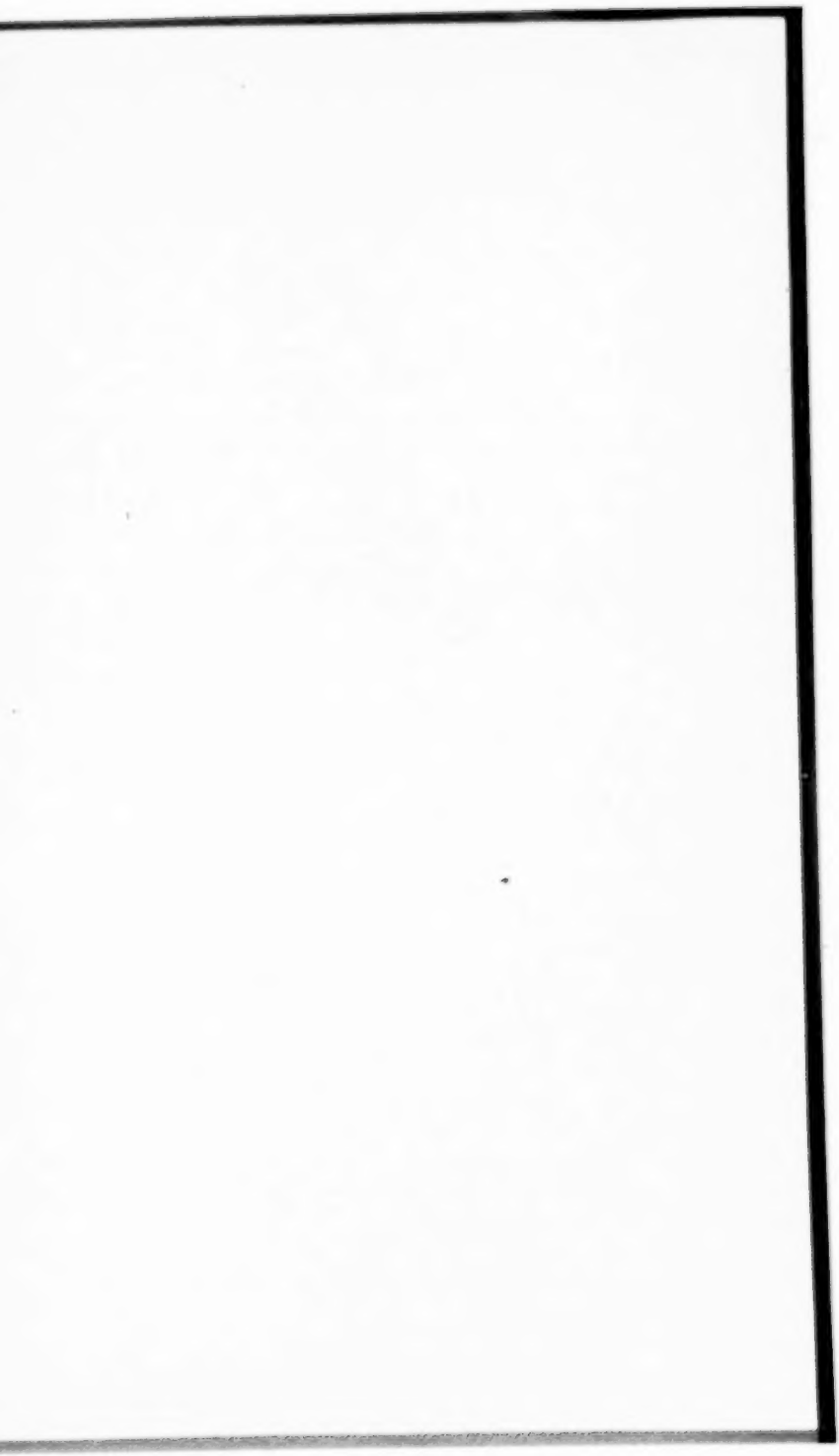

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No. 584. FEDERAL COMMUNICATIONS COMMISSION *v.* BROADCASTING SERVICE ORGANIZATION, INC. Certiorari, 336 U. S. 950, to the United States Court of Appeals for the District of Columbia Circuit. Argued May 9, 1949. Decided May 16, 1949. *Per Curiam:* The judgment is reversed. *Federal Communications Comm'n* v. *WOKO*, 329 U. S. 223. *Solicitor General Perlman* argued the cause

for petitioner. With him on the brief were *Benedict P. Cottone, Max Goldman* and *Richard A. Solomon. Walter M. Bastian* argued the cause for respondent. With him on the brief were *Ben S. Fisher* and *John P. Southmayd.* Reported below: 84 U. S. App. D. C. 152, 171 F. 2d 1007.

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